

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

3 VERSATA SOFTWARE * Civil Docket No.
* 2:08-CV-313
4 VS. * Marshall, Texas
*
5 * June 15, 2012
INTERNET BRANDS, ET AL * 12:30 P.M.

6
7 TRANSCRIPT OF JURY TRIAL
8 BEFORE THE HONORABLE JUDGE WILLIAM BRYSON
9 UNITED STATES FEDERAL CIRCUIT JUDGE

10 APPEARANCES:

11 FOR THE PLAINTIFFS: MR. SAM BAXTER
McKool Smith
12 104 East Houston, Suite 300
Marshall, TX 75670

13 MR. SCOTT COLE
MR. JOHN M. SHUMAKER
MR. KEVIN M. KNEUPPER
14 MS. LEAH B. BURATTI
MS. KRISTINA S. BAEHR
15 McKool Smith
300 West 6th Street
16 Suite 1700
Austin, TX 78701

17
18 APPEARANCES CONTINUED ON NEXT PAGE:

19
20 COURT REPORTERS: MS. SHELLY HOLMES, CSR
MS. SUSAN SIMMONS, CSR
21 Official Court Reporter
100 East Houston, Suite 125
22 Marshall, TX 75670
903/935-3868

23
24
25 (Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

1 APPEARANCES CONTINUED:

2 FOR THE PLAINTIFFS: MR. DEMETRIOS ANIAPAKOS
MR. KINAN H. ROMMAN
3 Ahmad, Zavitsanos, Anaipakos,
Alavi & Mensing
4 1221 McKinney, Suite 3460
Houston, TX 77010
5

6 FOR THE DEFENDANTS: MR. MICHAEL P. ADAMS
MR. JAMES G. RUIZ
7 MR. ANDREW J. SCHUMACHER
Winstead
8 401 Congress Avenue
Austin, TX 78701
9
MS. MELISSA SMITH
10 Gillam & Smith
303 South Washington Avenue
11 Marshall, TX 75670

12 *****

13 P R O C E E D I N G S

14 (Jury out.)

15 COURTROOM DEPUTY: All rise.

16 THE COURT: Please be seated.

17 Okay. Any -- you have the special
18 verdict form and you have the final instructions.

19 Any objections to either?

20 Plaintiffs?

21 MS. FITZGERALD: Yes, Your Honor.

22 We would reurge all of the objections that we made
23 earlier today.

24 And then in addition, we would object to
25 the new sentence on Page 18 that states: If you find

1 that the injured party failed to present adequate proof
2 of actual damages, you may award that party nominal
3 damages in the amount of \$1, if that party has proved
4 that contract was formed and breached.

5 We object to the inclusion of that
6 sentence for all the reasons that we've stated earlier,
7 but if the sentence is in the instructions, we believe
8 that it should state: If you find that AutoData failed
9 to present adequate proof of actual damages, you may
10 award AutoData nominal damages in the amount of \$1, if
11 AutoData has proved that a contract was formed and
12 breached.

13 And if you were to make that change, we would
14 ask that the sentence that says: If you find that a
15 party has proved that it's suffered actual damages, it
16 may recover lost profits, to if you find that Versata
17 has proved that it suffered actual damages, it may
18 recover lost profits.

19 THE COURT: I think the more generic form
20 is preferable in this context and not prejudicial to
21 your client.

22 And I would also point out that the
23 language in the last sentence is largely taken from
24 footnote -- no, not from the footnote, but from the
25 text, I guess it is, in the Southwest Airlines case. So

1 the objection is overruled.

2 Anything else on either the instruction or the special
3 verdict form?

4 MS. FITZGERALD: No, Your Honor. Well, I
5 would ask that you actually deny these -- the two things
6 we've requested that you've denied and sign these
7 orders, if possible today, so we can file them with the
8 Court.

9 THE COURT: You mean the -- are you
10 talking about the Rule 50s?

11 MS. FITZGERALD: Well, no. This is the
12 written requests for the revised instructions that we
13 discussed. And then also --

14 THE COURT: Okay. Well, I'll do that if
15 you want. It isn't necessary. It's certainly in no
16 court that I -- well, of course, I defer to the practice
17 here, but my practice -- my experience, such as it is,
18 has never required an actual signed denial when you're
19 talking about jury instructions. If you want to submit
20 them, my signature is available for free.

21 MS. FITZGERALD: Well, since we will be
22 presumably appealing them to your court, I think that
23 we're in good shape.

24 THE COURT: Definitely. I think you -- I
25 will say right now that I don't see any reason to

1 believe that with respect to the particular objections
2 that you've made that anything -- there's any procedural
3 defect that would lead me at least to conclude that
4 there's been a waiver.

5 Now, that's -- that's a somewhat
6 qualified statement, I recognize, but I think that's as
7 far as I can go. If that gives you any comfort, great.

8 If you want me to sign something, I'll
9 look at it, but I think that my -- my view is it isn't
10 necessary. But I leave that to you.

11 MS. FITZGERALD: Okay. And then the last
12 thing I'll add just for the record, we also object to
13 the nominal damages portion of the special verdict form.

14 THE COURT: I understand. I understand.
15 Okay. And I suppose as probably evident from the
16 instructions, I am going to deny both side's Rule 50
17 motions. We'll see what the jury makes of this case,
18 but I am not prepared to take any of the portions of
19 this case away from the jury at this time.

20 One more matter of business. Mr. Cole,
21 you objected to the fact and manner of the Court's
22 instructions to the jury with the respect to Plaintiffs'
23 Exhibit 310. I will invite you at this time to make a
24 request, if you have one, for any kind of curative
25 instruction.

1 MR. COLE: I think at this -- I don't
2 think a curative instruction would be helpful. The
3 substance of the instruction we do not have an objection
4 with, given the Court's ruling. It's more the last
5 thing they heard as they went out and the highlighting
6 of evidence from earlier on in the case.

7 THE COURT: All right.

8 MR. COLE: But with the Court's
9 instruction on closing argument, I think that's the best
10 curative instruction at this point.

11 THE COURT: I'm sorry. With the Court's
12 --

13 MR. COLE: The Court's restrictions to
14 opposing counsel --

15 THE COURT: I see. Yes, yes, yes.
16 Okay. Well, if that's satisfactory, is there anything
17 else we need to do?

18 My order of battle would be read the
19 instructions, go directly to Mr. Cole, and --

20 MR. COLE: Yes, sir.

21 THE COURT: -- you and Mr. Baxter will
22 decide to -- decide how to divide your time, and then
23 we'll go to -- who's going to go first, Mr. Adams or Mr.
24 Ruiz?

25 MR. ADAMS: I will, Your Honor.

1 THE COURT: Mr. Adams, followed by
2 Mr. Ruiz, followed by Mr. Baxter, and that will then
3 lead to the -- my little short charge to the jury, and
4 then the jury will go out to deliberate.

5 Any other issues that need to be
6 addressed?

7 MR. COLE: Not from Plaintiffs, Your
8 Honor.

9 MR. RUIZ: No, Your Honor.

10 THE COURT: Very good. Let's bring the
11 jury in.

12 I will say one thing. I am going to
13 advise them this is just because I'm told by
14 Ms. Lockhart that this -- that we should do something --
15 say something about the exhibits.

16 I'm going to advise them that the
17 exhibits are available for them. If they request them,
18 they can request them all; they can request specific
19 exhibits; they can request them categorically. And
20 we'll do our best.

21 Any objection to that?

22 MR. COLE: No, Your Honor.

23 THE COURT: All right.

24 COURTROOM DEPUTY: All rise for the jury,
25 please.

1 (Jury in.)

2 THE COURT: Welcome back. Please be
3 seated.

4 Members of the Jury, the time in the case
5 has come in which I will give you the instructions from
6 the Court, and I will read them. And when I'm finished,
7 you will hear from the lawyers. They will argue to you,
8 and then the case will be in your hands.

9 Members of the Jury, you have heard the
10 evidence in this case. I will now instruct you on the
11 law that you must apply. Remember, though, that you are
12 the judges of the facts. The legal term for what I'm
13 going to give you is the jury charge or the Court's
14 instructions.

15 Now, this has been a long and complex
16 case as you know, and the instructions I'm about to give
17 you will be somewhat long. They may also be a little
18 difficult to follow at times, because the law that
19 applies to the issues in this case is complex.

20 But I have made copies of the
21 instructions that I am now giving you that you can take
22 back to the jury room. Actually, they will be back
23 there in the jury room when you get back to the jury
24 room. You won't have to worry about taking them.

25 And you can consult those copies of the

1 instructions, if you need to. So if you miss something
2 as I'm reading, don't worry. Someone else will pick it
3 up, in all likelihood if you miss it, and you will
4 always be able to check the written copy that will be
5 available in the jury room for you.

6 Now, because I will be giving you a copy
7 of the instructions, I would suggest that rather than
8 taking notes as I speak, you just listen. It's -- it
9 will probably work better. You will have, in effect, a
10 complete set of notes in the copy of the jury
11 instructions.

12 After I instruct you on the law, as I
13 mentioned, the attorneys will have an opportunity to
14 make their closing arguments. And when they do, you
15 should keep in mind that statements and arguments of the
16 attorneys are not evidence and are not instructions on
17 the law. They are intended only to assist you in
18 understanding the evidence and the contentions of the
19 parties'.

20 Now, I'm going to begin by returning to
21 the subject of the burden of proof, which I discussed
22 with you a little bit at the outset of the case.

23 The preponderance of the evidence
24 standard that you will recall applies to most of the
25 issues in this case. That means that the party who is

1 asserting a particular claim must persuade you that each
2 fact that is necessary to that claim is more likely to
3 be true than untrue.

4 If the evidence fails to persuade you
5 that any fact necessary to prove a particular claim has
6 been proved by a preponderance of the evidence, you
7 should find in favor of the other party on that claim.

8 Now, as I mentioned at the outset, there
9 are some issues in this case to which a different burden
10 of proof applies. You will recall that the law
11 sometimes requires a party to prove a particular fact or
12 claim by clear and convincing evidence. That's a higher
13 standard of proof than preponderance of the evidence.
14 It means that you must be left with a clear conviction
15 or belief that the fact in question has been proved.

16 I will tell you which issues require
17 clear and convincing evidence when we get to them. For
18 now, all you need to know is that for most of the issues
19 in this case, the preponderance of the evidence standard
20 applies, which means that you just have to ask yourself,
21 am I persuaded that the party with the burden has shown
22 that the fact in question is more likely true than not.

23 Now, part of your task as finders of the
24 facts is to weigh the testimony of the witnesses.
25 That's a job that is very well-suited to jurors. For

1 example, if there is a conflict in testimony on a
2 particular point, use your common sense in deciding
3 which witness you believe -- you -- you think is more
4 believable.

5 If there's a question as to the relative
6 expertise of particular witnesses, use your common sense
7 to decide which witnesses you find more knowledgeable.

8 The fact that a person has testified as
9 an expert does not mean that you must accept that
10 witness' opinions as true. As with any other witness,
11 it is up to you to decide whether you find that
12 testimony convincing and choose to rely on it. Now,
13 certain testimony was presented to you through
14 depositions. A deposition is a recording of a witness'
15 sworn answers to questions that were asked in advance of
16 trial. The deposition testimony that you've heard is
17 entitled to the same consideration as other evidence in
18 the case.

19 I'll turn to the claims in the case now.
20 I'm going to start with Versata's claim that AutoData
21 infringed Versata's patent and AutoData's claim that
22 Versata's patent is invalid.

23 Now, what is patent infringement?

24 Once a patent is issued, the owner of the
25 patent, if the patent is valid, has the right to exclude

1 others from making, using, or selling the patented
2 invention throughout the United States for a period of
3 20 years.

4 Infringement -- patent infringement
5 occurs when a person, without the patent owner's
6 permission, makes, uses, sells, or offers for sale
7 something that is within the scope of what a patent
8 covers.

9 Now, how do we decide what the patent
10 covers?

11 We do that by looking at a patent's
12 claims. The patent's claims are the numbered paragraphs
13 at the end of the patent. The claims are important,
14 because it is the words of the claims that define what a
15 patent covers and the figures, the pictures in the front
16 of the patent, and the -- and the diagrams.

17 And the text in the rest of the patent
18 provide a description or examples of the invention, and
19 they provide a context for the claims, but it is the
20 claims that he defines the breadth of the patent's
21 coverage.

22 Each claim is effectively treated as if
23 it were a separate patent, and each claim may cover more
24 or less than another claim. Therefore, what a patent
25 covers ultimately depends on what each of its claims

1 covers.

2 Now, as you've heard, Versata says that
3 AutoData infringes 10 claims of the '821 patent through
4 its various activities in connection with the Chrysler,
5 Jeep, Dodge, Ram truck, and AOL websites. Versata
6 groups those claims into three categories.

7 First, Versata says that AutoData
8 directly infringes Claims 10, 13, 14, 17, 18, 19, 20,
9 22, and 23. And I read -- read them all -- I -- I
10 believe, if I have not miscounted, that that is all but
11 Claim 1. But in any event, those are the -- those are
12 the claims -- by manufacturing, testing, selling,
13 delivering, and importing the Chrysler, Jeep, Dodge, and
14 Ram truck web systems.

15 Second, Versata says that AutoData
16 indirectly infringes Claim 1 by engaging in those same
17 activities.

18 And third, Versata says that AutoData
19 indirectly infringes all 10 claims -- I won't read all
20 the claims, but all 10 of the asserted claims -- through
21 its activities in connection with the implementation of
22 the AOL website.

23 The 10 claims are listed in the written
24 copy, and I just won't recite it for you. If you need
25 to check, there they are.

1 Let me explain about direct infringement
2 and indirect infringement. Well, I'll do that in a
3 minute.

4 While there are a lot of claims to
5 review, you will notice that there is a lot of overlap
6 between them and that they fall into basically three
7 families of claims.

8 First, there is Claim 1, which is a claim
9 to a method of comparing products where at least one is
10 automatically generated.

11 Second, there is Claim 10, which is to a
12 computer system that includes a processor, a
13 computer-readable medium, and a computer code executable
14 by the processor; otherwise, it is much the same as
15 Claim 1.

16 Now, Claims 13, 14, 17, and 18 are in the
17 Claim 10 family, as I have referred to them. They are
18 dependent claims from Claim 10, and they each just add
19 one additional feature.

20 Third, there is Claim 19, which is to a
21 computer program whose code causes a computer system to
22 perform the method mentioned in Claim 1. So once you
23 figure out the first claim, you've done most of the work
24 necessary to understand all the claims.

25 Now, many of the claim terms will be easy

1 for you to understand. For the most part, you can just
2 give the words their ordinary meaning, even though the
3 claim language uses abstract terms rather than concrete
4 examples.

5 There are a few terms, however, that I
6 will define for you, even though my definitions use
7 abstract terms also.

8 The term automatically generate means to
9 require that the computer system generate the second
10 product configuration in response to a request from the
11 user and in accordance with the comparison criteria
12 provided by the user.

13 The terms comparison criteria and
14 criteria upon which to automatically generate mean the
15 product-related information provided by the user that
16 the computer system uses to generate the second product
17 configuration and to facilitate comparisons between the
18 first and second product configurations.

19 Now, some of the claims use the word
20 comprising. Comprising is a word that's used a lot in
21 patents and not much in ordinary conversation. It means
22 including or containing.

23 A claim that uses the word comprising or
24 comprises is not limited to products having only the
25 elements that are contained in the claim, but it also

1 covers processes or products that add additional
2 elements.

3 For example, take a claim that covers a
4 table. If the claim refers to a table comprising a
5 table top, legs, and glue, the claim will cover any
6 table that contains those structures, even if the table
7 also contains other structures, such as a leaf or wheels
8 on the legs.

9 Now, a patent owner has the right to stop
10 others from using the invention that's covered by the
11 patent -- by the patent claims during the life of the
12 patent. If any person makes, uses, sells, or offers to
13 sell what is covered by patent claims, without the
14 patent owner's permission, that person is said to
15 infringe the patent.

16 To determine whether there is
17 infringement, you must compare the alleged three
18 infringing products with the scope of the patent claims
19 as I have defined them for you.

20 In order to infringe a patent claim, a
21 product or process must include every element of the
22 claim. So in determining whether AutoData infringes
23 Versata's asserted claims, you must determine for the
24 accused product or process whether that product or
25 process or the use of that product or process contains

1 each and every element contained in a claim.

2 I'll refer to the separate paragraphs in
3 each of the claims at issue in this case as elements.
4 Sometimes in this case, the parties have referred to the
5 elements of the claims as limitations. You may recall
6 that term. That's a common patent law expression, but
7 I'll avoid using it just in the interest of clarity.

8 A claim element is present if it exists
9 in the accused product or process just as it is
10 described in the claim language.

11 Now, you must consider each of the
12 asserted patent claims separately. In the verdict form,
13 you will be asked to enter a separate verdict for each
14 of the claims asserted in the case.

15 Now, I mentioned a minute ago direct
16 infringement and indirect infringement.

17 Direct infringement refers to
18 infringement in which a single party commits all the
19 acts that are necessary to infringe. In order to prove
20 direct infringement, it is not necessary to show that
21 the party who is accused of infringement intended to
22 infringe or even knew that it was infringing.

23 As I mentioned earlier, Versata claims
24 that AutoData directly infringes a number of the claims
25 of the '821 patent by making, testing, selling,

1 delivering, and importing the infringing Chrysler, Jeep,
2 Dodge, and Ram truck web systems.

3 As I mentioned a moment ago, there's
4 another form of infringement that's being asserted in
5 this case, and that's indirect infringement. Now,
6 someone who induces someone else to infringe can be
7 guilty of indirect infringement, even if they themselves
8 did not commit the infringing act.

9 Versata claims that AutoData is liable
10 for indirect infringement by inducing the users of the
11 Chrysler, Jeep, Dodge, and Ram truck websites to
12 infringe the '821 patent.

13 In addition, Versata alleges that
14 AutoData induced AOL and AOL users to infringe the
15 patent by participating in the design sessions for
16 business requirements, usability, and technical
17 implementation of the AOL website, and also by providing
18 tools and data to AOL.

19 Now, to prove that AutoData is liable for
20 indirect infringement, Versata must prove by a
21 preponderance of the evidence first that AutoData took
22 action intending to cause others, such as AOL, AOL
23 users, or the users of the Chrysler, Jeep, Dodge, or Ram
24 truck websites, to infringe the '821 patent;

25 Second, that those users that AutoData

1 induced to infringe actually infringed some claim of the
2 patent;

3 And, third, that AutoData was aware of
4 the '821 patent and knew that others were infringing
5 that patent, or at least that AutoData was aware of a
6 high probability that the acts that it was inducing
7 would infringe Versata's patent, but intentionally took
8 steps to avoid learning about that patent.

9 Now, let's turn to patent invalidity --
10 invalidity.

11 AutoData contends that all of the claims
12 of the '821 patent that Versata is asserting are
13 invalid. Now, once a patent is issued, it is presumed
14 to be valid. That means that the fact that a patent was
15 issued to a particular person does not guarantee that
16 the patent is valid, but once it issues, the law says
17 that if a challenger wants to show that it is invalid,
18 the challenger has to make that showing by clear and
19 convincing evidence.

20 So patent invalidity is one of the issues
21 in this case to which the clear and convincing evidence
22 standard applies. In deciding whether particular claims
23 are invalid, you will interpret the claims in the same
24 way that you have in deciding infringement.

25 If an invention that is set forth in a

1 patent claim is not new, we say that it was anticipated
2 by the prior art. An invention that is anticipated by
3 the prior art is not entitled to patent protection. If
4 you find that AutoData has proved by clear and
5 convincing evidence that any particular claims asserted
6 against it are anticipated by the prior art, then you
7 must find that those claims are invalid.

8 Now, let me talk a little bit more
9 generally about what this term prior art means. In the
10 patent law, what came before or what's out there
11 already, so to speak, is often referred to as the prior
12 art. So you might say that the telephone is prior art
13 to the cell phone, and the cell phone is prior art to
14 the smart phone.

15 As a technical term in patent law,
16 however, prior art is used to describe those things that
17 you are allowed to look at to see if a particular
18 invention is really new.

19 Now, for a patent claim to be anticipated
20 by the prior art, every element of the claim in question
21 must be present within a single item of the prior art.
22 In deciding whether or not a single item of prior art
23 anticipates a patent claim, you should consider those
24 things that are expressly stated or present in the item
25 of prior art and also those that are inherently present.

1 Something is inherent in an item of prior
2 art, if it is naturally found in the prior art. A
3 particular feature is not inherent, however, if it is
4 not necessarily part of the prior art item but merely a
5 possible feature of that item.

6 So what counts as prior art for this
7 purpose?

8 AutoData is relying on prior art that
9 falls into three categories that are recognized by the
10 patent law. Those categories are:

11 First, anything that was described in a
12 printed publication anywhere in the world more than one
13 year before the filing date of the application for the
14 patent.

15 Now, the filing date for the '821 patent
16 is January 14th, 2000.

17 Second, anything that was in public use
18 or on sale in the United States more than one year
19 before the filing date of the application for the patent
20 in the United States. That's the second category of
21 prior art.

22 Third, anything that was publicly known
23 or used in the United States by someone other than the
24 inventor before the inventor made the invention.

25 Now, let's talk about these categories in

1 a little more detail.

2 Printed publication. Printed
3 publications from anywhere in the world are prior art,
4 if the printed publications were published more than one
5 year before the application for the patent was filed.
6 AutoData claims that the manual for its software
7 program, AutoQuote Pro, qualifies as prior art under
8 that test.

9 A document is a printed publication, if
10 it was reasonably accessible to that portion of the
11 public that is most likely to use it. It is not
12 necessarily that the public -- publication be available
13 to every member of the public. Publications may include
14 not only such things as books, periodicals, or
15 newspapers but also publications that are not as widely
16 available to the public, such as trade catalogs, journal
17 articles, or scholarly papers that are distributed or
18 available to those working in the field of the
19 invention.

20 A printed publication becomes prior art
21 on the date that it becomes available to the public.

22 Now, a printed publication anticipates a
23 claim if it contains a description of the invention
24 covered by the patent claims that would allow a person
25 skilled in the field of the invention, after reading the

1 printed publication, to make and use the invention using
2 a reasonable amount of effort or experimentation.

3 Second category, public use or on sale.
4 Regardless of the date of the invention, if a product or
5 process that is claimed in a patent was in public use or
6 on sale in this country for more than one year before
7 the filing date of the patent application, it is prior
8 art to the patent claim and anticipates the patent
9 claims.

10 AutoData contends that the subject matter
11 of the asserted claims of the '821 patent was in public
12 use for more than one year before the file date of the
13 '821 patent. In order for public use to anticipate
14 patent claims, three requirements must be met.

15 First, the use must occur more than one
16 year before the patent application was filed. Now, the
17 date of the invention for the patent claims is
18 irrelevant to this category of prior art.

19 Second, the use may be by anyone,
20 including the inventor or the patent owner. If the
21 inventor (sic) was in public use, it is not necessary
22 that those who used it appreciated that they were using
23 the invention at that time.

24 Third, the use must have been public in
25 order for the subject matter to be prior art.

1 Like public use, the sale or offer for
2 sale in the United States of a product may be prior art,
3 and thus anticipate a patent claim covering the prior --
4 the product or a method of making the product, if the
5 product was sold or offered for sale more than one year
6 before the patent application was filed.

7 The date that the subject matter of the
8 patent claims was invented is irrelevant to this
9 category of prior art.

10 In order for there to be an offer for
11 sale, two requirements must be met.

12 First, the product must have been the
13 subject of a commercial offer for sale.

14 And, second, the product must have been
15 developed to the point where there was a reason to
16 expect that it would work for its intended purpose.

17 The product may be the subject of a sale
18 for these purposes, even if it is not ready for
19 commercial production or has not been technically
20 perfected.

21 AutoData contends that the products at
22 issue with respect to this section are Versata's
23 SC Vehicle Compare and AutoData's AutoQuote Pro
24 software.

25 Now, prior knowledge or use by another in

1 the United States.

2 Knowledge or use in the United States of
3 a patented invention can be prior art to the patent
4 claims. The knowledge or use will be prior art, if it
5 meets the following four requirements:

6 First, the knowledge or use must be by
7 someone other than the inventor. This is different from
8 the previous two categories where the printed
9 publication or the prior public use or sale could be by
10 the inventor or anyone else.

11 Second, the knowledge or use must be
12 before the filing date of the application, January 14th,
13 2000.

14 Third, the knowledge or use must be in
15 the United States. Prior knowledge or use outside the
16 United States cannot be relied on to invalidate a patent
17 claim.

18 And, fourth, the knowledge or use must
19 have been public. Private or secret knowledge or use by
20 someone other than the inventor is not prior art.

21 Let me turn to another category that --
22 of invalidity called obviousness.

23 AutoData contends that the asserted
24 claims of the patent are invalid because the inventions
25 were obvious. A patent claim is invalid, if the claimed

1 invention would have been obvious to a person of
2 ordinary skill in the art -- in the field, basically, at
3 the time the application was filed. A claim does not
4 need to be both anticipated and obvious in order to be
5 invalid.

6 Now, you've heard the term a person of
7 ordinary skill in the art or the field a lot in this
8 case. That term gets used frequently in patent law, and
9 it is particularly important in deciding whether an
10 invention would have been obvious at the time it was
11 invented.

12 A person of ordinary skill in the art is
13 a hypothetical person of average education and training
14 in the particular field but who is aware of all the
15 prior art. To determine the level of ordinary skill in
16 the art, you may look to factors such as the nature of
17 the field of the invention, the sophistication of the
18 technology, and the typical education level of people
19 working actively in the field.

20 So, for example, if the invention is a
21 way to generate additional energy in a nuclear power
22 plant, the level of ordinary skill is likely to be
23 higher than if the invention is a new way to fold
24 cardboard boxes to make them stronger.

25 In determining whether the patent is

1 invalid because of obviousness, you should consider the
2 content of the prior art, identify the differences
3 between the prior art and the claimed invention,
4 determine the skill level of the person of ordinary
5 skill in the field at the time of the invention, and
6 take into account any objective indications that would
7 help determine whether the invention would or would not
8 have been obvious.

9 If, after consideration of all these
10 factors, you find by clear and convincing evidence that
11 the claim would have been obvious to a person of
12 ordinary skill in the art at the time the invention was
13 made, then you must find the claim invalid.

14 In determining whether the invention set
15 forth in a particular claim would have been obvious to a
16 person of ordinary skill in the field, you may consider
17 whether there is anything that would have prompted such
18 a person to combine the elements or concepts in the
19 prior art as the invention does.

20 But you should keep in mind that a patent
21 claim that consists of several elements is not rendered
22 obvious merely because each of those separate elements
23 was known in the prior art.

24 To choose a simple example, you could say
25 that a piano is really just a combination of wood,

1 ivory, metal, and wires, but that does not mean that
2 inventing the piano would be obvious if you just started
3 with a pile of wood, some wire, some pieces of ivory,
4 and a few chunks of metal.

5 So if the claimed invention combined
6 elements known in the prior art and the combination
7 yielded results that were predictable to a person of
8 ordinary skill in the art at the time of the invention
9 or the evidence shows that there was another reason to
10 combine the elements in the prior art, that evidence
11 would make it more likely that the claim is obvious.

12 On the other hand, if the combination
13 known elements yielded unexpected or unpredictable
14 results, or if the prior art would have led one to avoid
15 combining the known elements, that evidence would make
16 it more likely that the claim on the combination of
17 those elements is not obvious.

18 Now, you should also consider what are
19 regarded as -- what are referred to as objective
20 indications tending to establish obviousness or
21 non-obviousness. Some of those objective indications
22 include:

23 Whether the invention was commercially
24 successful as a result of the merits of the invention as
25 opposed to other reasons;

1 Whether the invention satisfied a
2 long-felt need;

3 Whether others had tried and failed to
4 make the invention;

5 Whether others came up with the same idea
6 at roughly the same time;

7 Whether the invention achieved unexpected
8 results;

9 Whether others in the field praised the
10 invention;

11 Whether others sought or obtained
12 licenses to the patent infringement inventor;

13 Whether persons skilled in the art
14 expressed surprise or disbelief regarding the invention;

15 And whether the inventor proceeded
16 contrary to the accepted wisdom in the field.

17 The presence or absence of any of these
18 objective indications may help you determine whether the
19 invention was or was not obvious.

20 Now, let me turn to the issue of patent
21 damages.

22 If you determine that Versata has proved
23 any of its patent infringement claims against AutoData
24 and that the claims of the '821 patent that are
25 infringed are not invalid, you must determine the

1 damages to which Versata is entitled.

2 Now, you should not interpret the fact
3 that I'm giving you instructions about damages as any
4 indication that Versata should win on its patent
5 infringement or not. It is your task to decide first,
6 whether AutoData's liable for the claims asserted
7 against it.

8 Only if you find AutoData liable on one
9 or more of the patent infringement claims will you need
10 to turn to the question of the damages.

11 A patent owner whose patent is infringed
12 is entitled what is called a reasonable royalty as
13 damages for the infringement.

14 A royalty is the amount of money that
15 someone pays a patent owner to be able to use the
16 patented invention.

17 A reasonable royalty is the royalty that
18 would be reasonable for the infringer to pay and for the
19 patent owner to accept for the use of the patent that
20 they both know is valid and that the infringer wants to
21 use.

22 Now, you are to decide what a reasonable
23 royalty would be based on the circumstances as of the
24 time just before AutoData began selling or using the
25 infringing product or process. You should assume that

1 AutoData knew at that time such things as the level of
2 sales and process -- profits that it would make using
3 the invention.

4 You should also assume that Versata was
5 willing to grant AutoData a license to sell or use the
6 patented invention and that AutoData was willing to pay
7 for that license.

8 In deciding what is a reasonable royalty,
9 you may consider the factors that Versata and AutoData
10 would consider in setting the amount AutoData should
11 pay, if they were negotiating a license in the real
12 world.

13 Here are some factors you may want to
14 consider in determining a reasonable royalty:

15 Whether the patent owner had an
16 established royalty in licensing the invention to
17 others; in the absence of such a licensing history,
18 whether there were any royalty
19 arrangements that were generally used and recognized in
20 the particular industry at that time;

21 What royalties AutoData and others paid
22 for the licensing -- for licensing patents comparable to
23 the patent;

24 Whether Versata had a policy of licensing
25 or not licensing the patent;

1 Whether or not Versata and AutoData are
2 competitors;

3 Whether being able to use the patented
4 invention helps AutoData in making sales of other
5 products and services;

6 The profitability of the product made
7 using the patent;

8 And whether or not it is commercially
9 successful or popular;

10 The advantages and benefits of using the
11 patented invention over products or processes not
12 claimed in the patent;

13 The extent of AutoData's use of the
14 patented invention and the value of that use to
15 AutoData;

16 Whether or not there is a percentage of
17 the profit or selling price that is customarily paid in
18 the particular business for the use of patented
19 inventions comparable to the inventions claimed in the
20 patent;

21 The portion of the profit that is due to
22 the patented invention as compared to the portion of the
23 profit that is due to other factors, such as unpatented
24 elements or unpatented manufacturing processes or
25 features or improvements developed by AutoData;

1 Expert opinions as to what would be a
2 reasonable royalty;

3 And any other factors, which, in your
4 mind, would have increased or decreased the royalty the
5 infringer would have been willing to pay and the patent
6 owner would have been willing to accept, acting as
7 normally prudent business people.

8 Now, that's the end of the instructions
9 on the patent claim.

10 Some water if anyone wants to -- if you
11 have water with you, and certainly feel free to have
12 some.

13 We're through most of the instruction at
14 this point, so bear with me.

15 We now move away from the patent
16 infringement and validity issues to a different set of
17 claims. On these claims, Versata and AutoData have both
18 asserted claims against one another.

19 First, misappropriation of trade secrets.
20 AutoData contends that Versata misappropriated two of
21 AutoData's trade secrets, the ACE, or automatic
22 comparably equipped algorithm, and what has been
23 referred to as the Ford schema, and that AutoData has
24 been harmed by that misappropriation.

25 Versata denies that it misappropriated

1 AutoData's trade secrets.

2 To prevail on its claim for
3 misappropriation of trade secrets, AutoData must prove
4 by a preponderance of the evidence that a trade secret
5 existed;

6 Versata acquired the trade secret through
7 either improper means or through a confidential
8 relationship;

9 Versata used the trade secret without
10 authorization from AutoData;

11 And the use injured AutoData.

12 A trade secret consists of any formula,
13 pattern, device, or compilation of information that is
14 used in a business and that gives the business an
15 opportunity to obtain an advantage over competitors who
16 do not know or use the trade secret.

17 Matters of general knowledge in an
18 industry are not trade secrets.

19 In order for confidential information to
20 qualify as a trade secret, the owner of the confidential
21 information must take reasonable precautions to protect
22 it. An agreement between the parties characterizing
23 information as a trade secret is not conclusive as to
24 its status, but it may be evidence of the value or
25 secrecy of the information.

1 There is no precise definition or formula
2 for determining whether any of the items claimed by
3 AutoData actually constituted a trade secret. Instead,
4 you must make that determination in light of all the
5 surrounding circumstances.

6 But the following factors may be relevant
7 to determining the existence of a trade secret, although
8 these are not the only factors that may be relevant, and
9 you are to weigh them in the context of all the
10 surrounding circumstances.

11 First, the extent to which the
12 information is known outside of AutoData's business;

13 Second, the extent to which employees and
14 others involved in AutoData's business knew the
15 information;

16 Third, measures taken by AutoData to
17 guard the secret -- secrecy of the information;

18 Fourth, the value of the information to
19 AutoData and its competitors;

20 Fifth, the amount of effort or money
21 expended by AutoData in developing the information;

22 And sixth, the ease or difficulty with
23 which the information could be properly acquired or
24 duplicated by others;

25 If you find by a preponderance of the

1 evidence that Versata misappropriated AutoData's trade
2 secrets, you will be asked to determine how much of
3 Versata's profits, if any, resulted from that
4 misappropriation.

5 Now, AutoData is not entitled to all of
6 Versata's income from its relevant contracts with Toyota
7 but only the net profits resulting from the acts of
8 trade secret misappropriation.

9 Breach of contract.

10 Both Versata and AutoData allege that the
11 other party breached its contractual obligations.
12 Versata alleges that AutoData breached the 2001
13 settlement agreement by discussing the terms of that
14 agreement with Chrysler and telling Chrysler that it had
15 a license to patents not covered by the agreement.

16 AutoData alleges that Versata breached
17 the 1997 confidential -- confidentiality agreement and
18 the 1998 Master Services Agreement by using AutoData's
19 technology or disclosing it to the U.S. Patent Office
20 and the public.

21 To recover damages for breach of
22 contract, a party must prove by a preponderance of the
23 evidence that the other party failed to comply with
24 their agreement and that the failure to comply with the
25 agreement resulted in harm to the non-breaching party.

1 That means that Versata has to prove that AutoData
2 breached the settlement agreement and that the breach
3 caused harm to Versata.

4 Similarly, AutoData has to prove that
5 Versata breached the confidentiality agreement or the
6 Master Services Agreement and that the breach caused
7 harm to AutoData.

8 If you find that either Versata or
9 AutoData or both breached their contractual obligations
10 to the other party, you must assess what sum of money,
11 if any, would fairly compensate the injured party for
12 the injury that it has suffered.

13 If you find that the party has -- has
14 proved that it suffered actual damages, it may recover
15 its lost profits. To recover damages for lost profits,
16 the injured party must prove that it is reasonably
17 certain that it would have earned profits but for the
18 breach and that the lost profits were a natural,
19 probable, and foreseeable consequence of the breach.

20 If you find that the injured party failed
21 to present adequate proof of actual damages, you may
22 award that party nominal damages in the amount of \$1, if
23 that party has proved that a contract was formed and
24 breached.

25 To decide the amount of the damages for

1 | lost profits, you have must determine the gross or total
2 | amount the injured party would have received but for the
3 | breach, and then subtract from that amount the expenses
4 | the injured party would have had, if the breach had not
5 | occurred.

6 Now, damages need not be established with
7 mathematical precision, but you must have a reasonable
8 basis for your calculation.

9 Tortious interference with prospective
10 business relationship.

Versata makes a claim that is known as tortious interference with prospective business relationship. Versata's claim is that AutoData interfered with Versata's effort to win a contract with Chrysler in 2008 by claiming that AutoData had a license to patented Versata technologies.

17 To prevail on this claim, Versata must
18 prove by a preponderance of the evidence that (1) there
19 was a reasonable probability that it would have entered
20 into a contractual or business relationship with
21 Chrysler;

22 (2) AutoData committed a wrongful act
23 that was a substantial factor in preventing the
24 contractual or business relationship from occurring;

25 (3) that AutoData acted with a conscious

1 desire to prevent the relationship from occurring or
2 knew that the interference was certain or substantially
3 certain to occur as a result of their conduct;

4 And (4) that Versata suffered actual harm
5 or damage as a result of the interference.

6 AutoData asserts the affirmative defense
7 of legal justification. Legal justification is a
8 complete defense to a tortious interference claim. To
9 find that AutoData was legally justified in --
10 tortiously interfering with Versata's prospective
11 contracts with Chrysler, you must find that AutoData had
12 a good-faith belief that it was legally entitled to act
13 as it did.

14 Tortious interference damages.

15 First, actual damages. If you find that
16 AutoData interfered with Versata's prospective business
17 relations with Chrysler, you will be asked what sum of
18 money would reasonably compensate Versata for its
19 damages, if any, caused by the interference.

20 Excuse me.

21 Exemplary damages. There's another type
22 of damages which is known as exemplary damages that can
23 be awarded in exceptional cases involving tortious
24 interference with prospective business relations.

25 Exemplary damages means an amount that you may, in your

1 discretion, award as a penalty or by way of punishing
2 the wrongdoer.

3 Versata is entitled exemplary damages, if
4 it proves by clear and convincing evidence, that the
5 harm it suffered resulted from AutoData's fraud, malice,
6 or gross negligence.

7 Now, proof of fraud requires proof that
8 the offending party made a material misrepresentation;
9 that the misrepresentation was made with knowledge of
10 its falsity or made recklessly without any knowledge of
11 the truth and as a positive assertion; that the
12 misrepresentation was made with the intention that it
13 should be acted on by the other party; and that the
14 other party relied on the misrepresentation and thereby
15 suffered injury.

16 Proof of malice requires proof that the
17 offending party acted with the purpose of causing
18 substantial injury to the other party.

19 Proof of gross negligence requires proof
20 of an act or omission by the offending party that
21 involved an extreme degree of risk, considering the
22 probability and magnitude of the potential harm to
23 others, and of which the offending party was aware but
24 nevertheless proceeded with conscious indifference to
25 the rights, safety, or welfare of others.

1 In deciding whether to award exemplary
2 damages, you may consider the following:

3 First, the nature of the wrong;

4 Second, the character of the conduct
5 involved;

6 Third, the degree of culpability of the
7 offending party;

8 Fourth, the situation and sensibilities
9 of the parties concerned;

10 Fifth, the extent to which such conduct
11 offends the public sense of justice and proprietary;

12 And, six, the net worth of the offending
13 party.

14 THE COURT: Now, that is the end of my
15 legal charge to you. You will now hear arguments from
16 the lawyers for each side, one hour to each -- one hour
17 to each side. So they will be dividing their arguments
18 up in various ways, but they have a total each of an
19 hour.

20 I don't know whether they will use it
21 all, but this is a complex case, so we've given them an
22 hour to explain the case to you. And I think you will
23 find it very helpful.

24 When they finish, I will give you a
25 short, additional charge about the process of

1 deliberations. Now, at this point, let me pause for a
2 moment and ask the lawyers whether they have any matters
3 they would like to raise with me outside the presence of
4 the jury, if there are any objections.

5 MR. COLE: None from the Plaintiffs.

6 THE COURT: No objections.

7 Any objections?

8 MR. ADAMS: Nothing from the Defendants,
9 Your Honor.

10 THE COURT: No objections.

11 Well, in that case, we don't have to send
12 you out. We can have the counsel begin their argument.
13 So we will call on Mr. Cole --

14 MR. COLE: Yes, Your Honor.

15 THE COURT: -- for the Plaintiffs.

16 MR. COLE: Thank you.

17 THE COURT: -- to give the Plaintiffs'
18 opening argument.

19 Just to be clear, let me give you a bit
20 of a scorecard here. Mr. Cole will argue the first part
21 of the argument for the Plaintiffs, then Mr. Adams, and
22 Mr. Ruiz will divide the argument for the Defendants,
23 and then I believe Mr. Baxter will come back with the
24 rebuttal argument on behalf of the Plaintiffs.
25 Go ahead.

1 MR. COLE: May it please the Court.

2 THE COURT: Oh, excuse me. Mr. Cole, I
3 went on for so long, I think maybe an opportunity for a
4 leg stretch might be good here.

5 MR. COLE: Yes, Your Honor.

6 THE COURT: We can get everybody's blood
7 flowing.

8 MR. COLE: Myself, too.

9 THE COURT: Thank you. Me, too.

10 Let's see. We've been going almost an
11 hour now, I think. All right. Let me ask the lawyers
12 about how you would like to proceed in terms of our
13 afternoon break. I don't know that we want to go -- I
14 bet the jury doesn't want to go two more hours without a
15 break. Does anybody object to our having the afternoon
16 break at the conclusion of your argument?

17 MR. COLE: That would be perfect with us.

18 THE COURT: Is that okay with everybody
19 on the Defense?

20 MR. COLE: Mine will probably be about
21 30ish minutes, I think.

22 THE COURT: All right. And a break at
23 the close of the Plaintiff's argument is that all right?

24 MR. RUIZ: That will be fine, Your Honor.

25 THE COURT: Okay. That's what we'll do.

1 Very good. Why don't we begin. Mr. Cole.

2 MR. COLE: Thank you, Your Honor. May it
3 please the Court.

4 In opening statement, I told you this was
5 a case about unfair competition. And I think after
6 we've seen the evidence, we've learned something else,
7 and that is this is also a case about unfair litigation.

8 And what do I mean by that? What I mean
9 is the contrast between the types of proof you saw from
10 us and from AutoData.

11 And when we proved our case, our case
12 that they violated our intellectual property rights, we
13 called Dr. Nettles and marched through every claim and
14 every element of every claim of our patent. It was
15 long, it was painful, but it is what the law requires.

16 We took every element of every claim,
17 showed evidence, explained why AutoData's product, in
18 fact, meets that evidence -- excuse me, meets that
19 element. And in response to that, AutoData offered
20 nothing to suggest that they do not infringe our patent.
21 Now, contrast that with AutoData's case that we took
22 their intellectual property, and I think you'll see a
23 marked contrast. It is probably best summed up by Mr.
24 Perrier's testimony on Wednesday afternoon. This is his
25 summation:

1 What would you like to get in this
2 proceeding?

3 I want my compare stuff back. What they
4 stole from me, I want it back.

5 They asked you to find a violation of
6 their intellectual property. What intellectual
7 property? Their compare stuff.

8 Throughout this trial, we've heard other
9 phrases of their various claims. They've called it that
10 we've taken the essence of their ideas, we have taken
11 the flavor of their trade secrets. We have used and
12 taken the basic concept of their ideas, the abstract of
13 their ideas.

14 It's been phrased in different ways, but
15 the common denominator is that their claim that we took
16 something that belonged to them have been vague, they
17 have been ever-changing. And you saw it most on
18 cross-examination of their witnesses because every time
19 somebody was asked to specify precisely what these trade
20 secrets are, they fought it tooth and nail.

21 The common denominator on
22 cross-examination from AutoData's witnesses was,
23 priority number one, do not get pinned down on what the
24 trade secrets are with any detail. That's not fair. If
25 you accuse someone of taking your property, you need to

1 be able to say with specificity what that property is.

2 AutoData was never able to do that, and
3 the reason is they don't have any trade secrets really.
4 It doesn't make them a bad company. It doesn't mean
5 they don't have good products or good people. It just
6 means they don't have precisely defined trade secrets
7 and certainly means that we didn't take or use or do
8 anything wrong with any of it.

9 And, in fact, when you -- when you step
10 back even further, the essence of what they did here
11 today over the last week was they exaggerated their
12 claims of intellectual property. They offered an
13 overreaching claim that they own, in fact, property that
14 they don't own. And that actually marries up with the
15 other side of this case, which is our case about the
16 Chrysler deal. Because as you remember from opening and
17 throughout this case, we -- we argued and we believe the
18 evidence shows that in trying to win the Chrysler deal,
19 AutoData did the same thing. They over-promised to
20 Chrysler their IP rights. They told Chrysler that they
21 had the rights, broad rights, to our ideas, our
22 innovation and our patented technology; and they didn't
23 have those rights. They overstated their intellectual
24 property rights here in this case, and we believe the
25 evidence shows they did the same thing to win Chrysler

1 in the first place, and that's what brought us here.
2 Okay. What I'd like to do now is show you -- you're
3 going to get a series of questions -- excuse me -- that
4 you're going to have to answer, and I'd like to walk
5 through each one and tell you what we believe the
6 evidence shows the answer should be and talk about some
7 of the evidence.

8 So, Mr. Diaz, if we could put up Question
9 No. 1.

10 Okay. The first question is patent
11 infringement. And you'll see there's an answer for each
12 claim there. That's 1A is whether they infringe, and
13 there's a separate answer for each of the, I think, 10
14 claims at issue. We believe the answer for each of
15 these is going to be yes. And Dr. Nettles, again, this
16 was the death march through the patent from Dr. Nettles.
17 And, again, Dr. Stubblebine, their expert, did not offer
18 any testimony whatsoever that they don't infringe.

19 That's clear, we believe.

20 Second, this is also under patent
21 infringement 1B, this is the validity defense. This is
22 AutoData's argument that we don't -- it doesn't matter
23 if we infringe their patent because their patent is
24 invalid. That's their argument. Now, we believe the
25 evidence is clear here that the answer is no. In other

1 words, no, the patent is not invalid. That's kind of
2 confusing, I know; but we believe 1A is yes, 1B is no.
3 Now, what's the evidence on validity? Basically they
4 brought in, they had this demonstration of AutoQuote
5 Pro, their software that Mr. Wedermann told you they had
6 since '95 or '97, I believe he said. But in order to
7 actually prove up that that product invalidates our
8 patent, they had to go through the same process that Dr.
9 Nettles did. In other words, they had to take all that
10 evidence and then go through each element of each claim
11 in that patent and explain how each element of each
12 claim is met by that piece of software. They did not do
13 that.

14 In fact, what you saw is Dr. Stubblebine
15 put up one of the claims, and they basically quickly
16 ticked through some, but not all, of the claim elements,
17 and he talked about, well, that was in the AutoQuote
18 Pro, that was in the AutoQuote Pro. He didn't point to
19 any evidence other than basically remember that
20 AutoQuote Pro did this, remember that it did that, and
21 he skipped steps as Dr. Nettles clarified today.

22 They didn't talk about all the claims
23 either. They did not do what the law requires them to
24 do, which is to prove each element of each claim was, in
25 fact, in that product. And it's clear even from Dr.

1 Stubblebine's testimony that that product was not a
2 two-computer system. And Dr. Nettles testified, Jeff
3 Van Dyke testified, Josh Walsky testified, and Seth
4 Krauss testified that the technical difficulties going
5 from a one-computer system to a distributed system that
6 is capable of going on the internet are difficult.
7 Those are not easy problems to solve.

8 And so, even if you take everything that
9 they said as true, that does not prove up that that
10 product invalidates our patent. And not only that, the
11 law is clear as Judge Bryson instructed you, our burden
12 to prove infringement is by a preponderance of the
13 evidence. Their burden to prove invalidity is by clear
14 and convincing evidence. In other words, their burden
15 to prove invalidity is higher than ours. They were
16 required to do more than we were, and instead they did
17 less.

18 Now, the third question -- Mr. Diaz --
19 oh, I'm sorry, I skipped the second. Back, back, sorry.

20 There we go okay. Sorry.

21 All right. So, that's 1A and B. Now,
22 we'll go to the next page, which, I guess, is 3. Okay.
23 All right. 1C, that's actually the argument I mentioned
24 earlier that they claim that while they did not actually
25 have a two-computer system, it would have been obvious

1 to do that. That was Dr. Stubblebine's testimony; but,
2 again, Dr. Nettles said otherwise, Seth Krauss said
3 otherwise, Jeff Van Dyke said otherwise and Josh Walsky.
4 We think the evidence is that that was not an obvious,
5 easy thing to do. They admit there are differences,
6 they claim those differences are obvious; but we don't
7 think the evidence backs that claim up.

8 Can you put it back up?

9 All right. So, we think the answer to 1C
10 is another invalidity question is no for every one of
11 those 10 claims. So, basically, yes to 1A, and then no,
12 no. And then that means there is an infringed patent
13 that is valid; and if you have that, and we believe the
14 evidence shows it, you then get to 1D, which is the
15 damages answer.

16 This is the patent infringement damages.
17 And Mr. Mills, our damages expert, testified to the
18 number of 137,200. We believe that's the right amount,
19 and we don't believe that their expert, Mr. Ratliff --
20 he did offer some testimony in contradiction of that,
21 but we think it was really thoroughly impeached.

22 \$137,200, we believe is the clear answer
23 to the patent infringement damages.

24 Okay. Let's go to the next question, if
25 we could, Mr. Diaz.

1 This is breach of contract, do you find
2 that Versata -- this is our breach of contract case --
3 has proved by a preponderance of the evidence that
4 AutoData failed to comply with the settlement agreement?
5 Now, the settlement agreement, again, I know there's
6 different contracts here, so it's a little confusing.

7 The dispute the parties had back in the
8 late 1990s, if you recall, AutoData started that, they
9 filed a frivolous lawsuit against us, we responded with
10 a patent infringement case, and then in 2001, the
11 parties agreed to settle their differences.

12 Now, an important part of that, as we
13 showed you, was a provision that says the parties to
14 that agreement are not to disclose, confirm or discuss
15 the terms of that agreement at all. We agreed to that,
16 they agreed to that. And that's the provision we
17 believe the evidence shows was broken here in connection
18 with the Chrysler deal. And just to be clear, that
19 confidentiality provision was important, and it was most
20 important in exactly the situation that it was broken
21 here. It is most important that when parties agree to
22 settle their disputes, that settlement is not used
23 against you in competition, and that's exactly what
24 happened here. They used this settlement agreement in
25 order to assure Chrysler, despite its concerns, that

1 they could do anything we could do. And that's exactly
2 the situation we had in mind when we required this in
3 the first place.

4 What's the testimony on that? The first
5 piece of testimony, Mr. Diaz, I don't know if you can
6 pull up Slide 8, Mr. Jacops' testimony.

7 Mr. Jacops testified that -- you'll
8 recall the sushi lunch, this was June 25th, 2008, he was
9 meeting with Chrysler's Chuck Sullivan. And at this
10 point, it was clear that they had already been told that
11 auto -- some company, one of the big competitors, and we
12 know there were only two, one of the other competitors
13 had said that they had a license to our entire
14 intellectual property portfolio.

15 And he -- Mr. Jacops testified later that
16 while no names were -- were made during that
17 conversation, it was very clear from the context, very
18 clear from the basic relationship of the parties that
19 that was talking about AutoData. That is a clear breach
20 of the settlement agreement. There's no question --
21 nobody has even disputed it. If, in fact, they told
22 them that they had a license to our entire intellectual
23 property portfolio that that would be a breach. They
24 don't even contest that.

25 Now, what other evidence is there? Mr.

1 Sullivan, the other party to the sushi lunch, was also
2 asked about that exact conversation. And what Mr.
3 Sullivan said was, I don't remember exactly, but I
4 certainly couldn't dispute it. And I asked him, well,
5 if Mr. Jacops comes and testifies that you told him that
6 AutoData told you they had a portfolio license, well, I
7 can't confirm it, but I can't deny it either. In other
8 words, both parties to that conversation are in
9 agreement. Now, Mr. Sullivan doesn't remember the
10 details, but he does not dispute what Mr. Jacops
11 testified here on Monday.

12 Third piece of evidence was the
13 deposition of Dennis Ephlin, one of AutoData's
14 employees, who testified unequivocally that he talked to
15 Mr. Perrier about this subject, Mr. Perrier told him go
16 tell Chrysler, there's no issues, we've got a contract,
17 we've got our own technology, no problem here, nothing
18 to see. And then he was very clear in his testimony he
19 went and told that to Chrysler. Clear evidence of a
20 breach.

21 Next piece of evidence on this,
22 Plaintiff's Exhibit 117. This was a document we looked
23 at a couple of times including in opening statement.
24 Go to the next page. If you can blow it up.

25 Again, this is from Dennis Ephlin to Greg

1 Perrier, Chris Wedermann. In today's status meeting,
2 Chuck, again Chuck Sullivan, mentioned something about a
3 perpetual license that AutoData has with Trilogy on
4 config and wanted to understand more. There is no
5 question that Chuck Sullivan knew about this perpetual
6 license on config. And we think the evidence earlier
7 shows that Mr. Sullivan went into the sushi lunch
8 already knowing that because he brought it up with Mr.
9 Jacops.

10 Now, given the context and given that
11 evidence, we don't think that -- excuse me -- we think
12 the evidence is clear that, in fact, AutoData did
13 exactly what we said. They assured Chrysler because
14 when Chrysler was looking for a replacement for Versata,
15 they were concerned and AutoData offered assurances that
16 there was nothing to worry about because they had a
17 complete license to our technology.

18 Now, let's go to the next cause of
19 action, which is the tortious interference. Okay. This
20 one has several parts, too.

21 Question 3A: Do you find Versata has
22 proved by a preponderance of the evidence there was a
23 reasonable probability that it would have entered into a
24 contract with Chrysler?

25 This is talking again about the

1 replacement bid in 2008, was there a reasonable
2 possibility -- excuse me, reasonable probability that we
3 would have won that deal. And what's the evidence on
4 that?

5 Okay. So, what's the evidence that there
6 was a reasonable probability that we would have won that
7 business had AutoData not broken the contract and not
8 misrepresented the scope of their intellectual property
9 rights?

10 Well, first of all, we had been the
11 vendor, we had been providing the software for Chrysler
12 for four years at that point. Second, Plaintiff's
13 Exhibit 117, which we just looked at, the part right
14 below the part I was just going to mention specifically
15 that Chrysler was prepping and super-sensitive to
16 Trilogy patents. This is a very important document.
17 Chrysler's mental -- Chrysler's mind during this process
18 is that they were super-sensitive to our patents. The
19 notion that AutoData -- AutoData's representations,
20 misrepresentations to them about what rights they had
21 was on a very important issue to Chrysler. Had they not
22 done that, Chrysler would have known AutoData had a
23 limited license to a small part of our patent portfolio,
24 and nothing like a portfolio license that would allow
25 them to do anything they want. That was a crucial fact.

1 We heard from Chuck Sullivan in his
2 deposition testimony that you saw that he asked
3 everybody to assure him that they had the legal rights
4 to do everything they were requesting in the RFP. Mr.
5 Sullivan wouldn't have done that if it wasn't an
6 important issue. He asked every vendor to assure him
7 that they had the legal rights to do everything in the
8 RFP. And we know from the testimony here today that
9 they actually infringe one of our patents. In fact, as
10 I mentioned, AutoData doesn't even dispute infringement
11 here. We know that.

12 And your common sense tells you that if
13 you're Chrysler and you're trying to come up with a
14 new -- new software or you're trying to come up with a
15 replacement for us to do the same thing we did and save
16 money, the last thing in the world that you would want
17 or need is a messy lawsuit about who can do what to
18 whom, and I think your common sense would tell you that
19 that is simply something that they would have avoided at
20 all costs.

21 Okay. Now, let's put that all in context
22 a little bit as well.

23 If we could put the jury charge back up.

24 So, we think the answers to 3A, B, C, and
25 D are all yes -- sorry, I missed one. Right. Okay.

1 Sorry. Let's put D off for now. A, B, and C, yes,
2 these are the tortious interference claims. Now, let me
3 provide a little more context to flush out the rest of
4 the evidence on this subject.

5 Okay. So, again, our contention is we
6 would have won this deal but for their wrongdoing.

7 Now, we know from the evidence that there
8 were only three competitors here. There was Versata,
9 there was AutoData, and there was a third company called
10 Chrome; but we know for sure that Chrome was not a
11 viable option. And Plaintiff's Exhibit 656 proves this.
12 Plaintiff's Exhibit 656 was a deposition on written
13 questions, a sort of written-out deposition of Chrysler,
14 we saw this in the case, and it was talking about
15 Chrome. And at the bottom it says, I do not recall that
16 pricing -- excuse me, I do recall that pricing was not a
17 factor in the final review of Chrome's RFQ response as
18 they did not meet the technical requirements of the RFQ.
19 In other words, just because you're cheap isn't really
20 the point if you can't do the technical work. Chrome
21 couldn't do the technical work. And AutoData overstated
22 their legal right to do the technical work. That leaves
23 Versata who had proven it could do the work because we
24 had been there for four years doing it.

25 Now, let's put -- let's put a little more

1 context up here. We know, and I mentioned this in
2 opening statement, that what Chrysler was looking for --
3 And this is PX 352, Mr. Diaz.

4 What Chrysler was looking for in this RFP
5 process was to find somebody who could offer the same
6 functionality that we were currently offering at a lower
7 price.

8 And if we could go to the second page.
9 Blow up the top there.

10 This is AutoData's notes of an early
11 meeting with Chrysler. As a first phase, this would
12 enable Chrysler to replace the current software while
13 maintaining the existing functionality. That's
14 important, maintaining the existing functionality and
15 look and feel. They wanted the same thing they already
16 had, and they wanted it for less. So, again, if
17 AutoData didn't have the legal right to do what we could
18 do, they couldn't meet Chrysler's goals.

19 Second, we know from -- we won't pull
20 this document up to save a little time, but we saw Mr.
21 Jacops testify and looked at some documents that showed
22 there was substantial support for Versata in Chrysler.
23 They had a lot of fans there. Now, there were others
24 that didn't like us as much, but we had a lot of support
25 in Chrysler. And if Chrysler knew that nobody else

1 could do the work that was necessary, they would have,
2 in fact, stayed with us. We know from Plaintiff's
3 Exhibit 117 that Chrysler was super-sensitive to our
4 patents.

5 Now, what else do we know? There were
6 some unusual things about how this process rolled out
7 from the time that AutoData started working. If you
8 recall, the contract that AutoData ultimately won, they
9 started work on that in May of 2008. May of 2008,
10 AutoData starts work on the replacement for us. Now,
11 what's interesting though is the contract was not signed
12 until September of 2008. So, they started work months
13 before the contract was ever signed. And you saw Bing
14 Burris, one of the depositions, he testified that nobody
15 at Chrysler would ever do things without a contract.
16 That was highly, highly unusual and something that is
17 simply not done.

18 Now, why would they do that? Well, I
19 think the evidence shows you they did that because they
20 were hedging their bets. In other words, they gave the
21 business to AutoData, but they were not sure enough to
22 sign the contract yet. So, instead, they let AutoData
23 begin work under the assurances that they had given
24 Chrysler but held off on signing the contract until they
25 knew how things were going to turn out.

1 Chrysler was in the mode to hedge their
2 bets; and if it didn't work out, the evidence shows you
3 that what Chrysler would have done is come back to
4 Versata because they were telling Versata all along that
5 we were still in the running, not to go away.

6 Now, let's look at Plaintiff's Exhibit,
7 30. This shows this pretty well.

8 Now, at the very top, this is Dennis
9 Ephlin, again the AutoData and this is in July, this is
10 during their implementation but before the contract was
11 signed, and they're about to have a meeting with Versata
12 who doesn't know that AutoData is hard at work replacing
13 them. And they say, listen, everyone who is going to be
14 on this call, it's important, we need to treat this as a
15 discovery session. We are not under contract, we don't
16 have deadlines or build issues, we are on a SOW, that's
17 a statement of work, exploring some of the issues in a
18 discovery-type work.

19 Now, why would they go to the trouble of
20 deceiving Versata about the status of their contract, or
21 perhaps did they not have a contract like the evidence
22 showed?

23 Now, one final point on this issue.

24 If we could look, Mr. Diaz, at PX 134,
25 second page.

1 There was a little bit of history here,
2 too. And history a lot of times can teach you a lot. A
3 little earlier AutoData actually replaced Versata in
4 Canada. Now, you recall AutoData's based in Canada, and
5 they have strength there. And if we look at the top,
6 you can see something interesting. During the course of
7 their attempt to replace us in Canada, some problems
8 happened, and they're talking about that.

9 Now, Nancy and Neal are nervously
10 supporting us -- this is AutoData -- but have mentioned
11 that if we do not have this functioning come Friday, she
12 will -- in all caps -- turn us off and go back to
13 Trilogy. We think the same thing would have happened
14 here.

15 Okay. Now, let's go back to the charge,
16 if we could, Mr. Diaz.

17 All right. So, A, B, C, yes, yes, and
18 yes. That basically proves that we -- that they
19 interfered with our contract and -- let's see -- but for
20 this, we would have won the business.

21 Now, 3D, this is a defense, it says, even
22 if you answered yes, do you find AutoData was legally
23 justified to intentionally interfere. I don't believe
24 we've heard much evidence on that. We'll see what
25 AutoData's lawyers say, but we can think of no legal

1 justification that they have to intentionally interfere
2 with our contract to misrepresent to Chrysler the scope
3 of their rights. We can think of no justification for
4 that.

5 Okay. Let's go to the next question.

6 Okay. This is damages for -- now, this
7 is damages for -- it's a little confusing here -- Either
8 the breach of contract that we looked at earlier or the
9 tortious interference claim that we just talked about.

10 In both situations the damages claim
11 we're making is the same.

12 So, again, we're saying that Chrysler --
13 excuse me, AutoData broke our contract by talking about
14 the license and then misrepresented the scope of that
15 license. Both of those lead to the same conclusion
16 which was that we would have won that business instead.
17 And we believe the damages in that situation, as Mr.
18 Mills testified, were between 11- and \$14.6-million.

19 We, of course, believe the higher number
20 is more appropriate. It's ultimately up to your
21 discretion, but we believe the evidence will support a
22 14.6-million-dollar award for both of those causes of
23 action.

24 And keep in mind that Mr. Ratliff, their
25 damages expert, had no criticism of the 5-million-dollar

1 a year profit figure that Mr. Mills offered, he didn't
2 disagree with that. And, in fact, remember also that
3 that 5-million-dollar a year figure that underlies this
4 calculation, that is less than AutoData is making today
5 at Chrysler.

6 Okay. Let's go to the next question.

7 Now, this is a question on punitive
8 damages, exemplary damages. Now, I'm not going to spend
9 too much time on this. But Question No. 5 is a question
10 that asks you are the conditions here -- are there
11 conditions here that would possibly justify the
12 imposition of exemplary damages?

13 And we believe the evidence does show
14 that AutoData's tortious interference resulted in fraud.
15 As I mentioned, they misrepresented the scope of their
16 rights. And if it resulted from fraud, the answer to
17 Question A is yes.

18 Now, 5B is the amount. We're not going
19 to suggest an amount for you on this. If you believe
20 the conditions are such that exemplary damages would be
21 appropriate, we believe there are; but if you do, that
22 is something that is in your discretion, and we will
23 leave it up to you if you feel that's appropriate and
24 whatever amount you feel is appropriate.

25 Okay. Now, let's move on to the next

1 question if we could. Now, we're getting to AutoData's
2 claims. This is their counterclaim for misappropriation
3 of trade secrets. Okay. So, what -- the first thing
4 they have to do in order to make this cause of action is
5 they have to prove that they have a trade secret or in
6 this case two, three, or however many they're claiming.

7 And what a trade secret is -- and I asked
8 this of Dr. Stubblebine -- there's a formula, pattern,
9 device or compilation of information that it belongs to
10 AutoData and gives them advantage over their
11 competitors; so, that's the first step.

12 The second step is you've got to find
13 that whatever that was was not a matter of general
14 knowledge. Now, I think the answers to both of these
15 are no. Actually, all three. We think the answers to
16 both of these are no, and that's a result of their
17 constantly shifting claims. They haven't proven any
18 specific formula, pattern, device or compilation of
19 information that belonged to them, none whatsoever.

20 They certainly haven't proven that those
21 things, whatever they may be, are not a matter of
22 general knowledge. And frankly, this is why they've
23 been so evasive on this subject. They don't want to be
24 specific because then you can point to something in the
25 public that says, hey, this thing you're claiming,

1 that's a matter of general knowledge. But if you keep
2 changing your position on that every five minutes, it's
3 hard to pin them down and find something in the public
4 that would prove this thing really isn't a secret. They
5 have not proven their case at all.

6 Now, the third one is a question of if
7 you find that they actually have a trade secret, you
8 still have to show that they took reasonable precautions
9 to protect it. Now, I mean, they did testify that they
10 locked the door, I don't know if that's enough. We
11 don't think the answer is yes, We don't think they
12 proved that anyway. But that, I think, is really not
13 the focus of the dispute here.

14 Now, let's go to the next cause of
15 action. Okay. Now, here we get to another important
16 point. This is what we call the use section. In other
17 words, even if you find they have trade secrets, which
18 we don't think you should, but if you do, you still have
19 to find in addition that they proved that the alleged
20 trade secrets, whichever ones we're talking about, were
21 misappropriated by us in applications and components
22 provided to Toyota in 1998. Okay.

23 So, where have they been on that issue?

24 Well, first, the first position was that
25 we used this in Toyota because we put it in a product

1 called SC Vehicle Compare, you heard about that, and
2 several other products that you heard Mr. Ratliff
3 testify was the initial basis of his opinion. We took
4 their trade secrets and put them into those products,
5 sold those, gave those to Toyota. That was the initial
6 position.

7 After that, they then fell back to the
8 position that we put this in SC Vehicle Compare by
9 itself and sold that to Toyota. That was their next
10 position. That lasted as long as Mr. Perrier's
11 cross-examination where he admitted on cross that, in
12 fact, SC Vehicle Compare does not contain any of their
13 trade secrets.

14 We can get that one up. I think that's
15 Slide 1, I believe.

16 This is from Mr. Baxter's cross. So, we
17 didn't use any of your trade secrets in SC Compare; is
18 that correct?

19 Answer: That's correct.

20 So, that theory fell under the evidence
21 as well. And you know it fell under the evidence
22 because when Mr. Anaipakos was crossing Mr. Ratliff on
23 this exact point, Mr. Ratliff said, well, I saw that
24 testimony, but I believe Mr. Stubblebine, their expert
25 who said it doesn't contain the trade secret, not Mr.

1 Perrier, the CEO, who said it doesn't. That shows you
2 all you need to know about the theory that SC Vehicle
3 Compare contained our trade secrets. They proved
4 absolutely nothing. In fact, the evidence conclusively
5 shows it doesn't.

6 Now, there's another problem with this
7 theory even if Mr. Perrier had never taken the stand,
8 and the other problem is that that product was never
9 given to Toyota. There's no -- there's no debate about
10 that at all, never given to Toyota.

11 Now, after that, AutoData fell back to
12 yet another position, and that position was we wrote up
13 a schema that supposedly took their trade secrets and we
14 gave this piece of paper to Toyota with the schema in it
15 and that was what justifies getting every penny of the
16 profits we made from Toyota.

17 Well, that theory then fell when Mr.
18 Krauss came in and explained how those pieces of paper
19 that they were pointing to were never even given to
20 Toyota. So, the piece of paper theory fell by the
21 wayside.

22 And finally by the end of the trial, I
23 suppose their theory is going to be that we improperly
24 used their trade secrets internally and never gave them
25 to anybody. And we heard Mr. Adams cross-examining Mr.

1 Krauss, I think, today.

2 Question -- this is from the draft of the
3 transcript from today.

4 Question: I haven't heard any testimony
5 of anybody giving any trade secret to Toyota, have you?

6 Answer: Sorry. The only alleged
7 transfer of this information was to Toyota.

8 I think it's been established now that
9 those documents didn't go to Toyota. So, I suppose they
10 may come up here in a few minutes and say that actually
11 we misappropriated their trade secrets by taking them
12 and using them internally somehow and never giving them
13 to Toyota, but that's still enough for them to claim --
14 make a claim against us.

15 Well, there's a problem with that theory
16 if they try to articulate it. And the problem with that
17 theory is the contract. Plaintiff's Exhibit 452, this
18 is the contract --

19 We don't have to bring it up, Mr. Diaz.

20 This is the May 1998 contract that they
21 point to and they say we breached this contract. Well,
22 it says in Section 7.1, you'll have this in your jury
23 room if you ask for it, Plaintiff's Exhibit 452, Section
24 7, License, it says they gave us a license to this stuff
25 they gave us, whatever it is, a nonexclusive,

1 nontransferable license for the sole purpose of
2 designing and prototyping new customer facing
3 applications for auto manufacturers like Toyota.

4 And you heard Mr. Krauss say we actually
5 tried to get AutoData involved in the Toyota deal. And
6 even if we used some trade secret they have, which I
7 think, again, the evidence is clear we didn't, even if
8 we did, they said we could. We tried to work with them
9 to get that business. It didn't work out. But the
10 contract authorizes us to do that.

11 So, they have no theory despite all the
12 ones they've gone through, no theory at all that we used
13 their trade secrets improperly even if they can prove
14 one in the first place.

15 Now, I will --

16 I think that's all the questions, isn't
17 it, Mr. Diaz? Oh, I'm sorry, there's one more.

18 So, the answer on their trade secrets is
19 no. Now, the last one they have a breach of contract
20 claim, too, which is the same thing as their trade
21 secret claim. Their breach of contract argument is they
22 gave us confidential information that we used
23 improperly. What confidential information? The same
24 thing they're pointing to as their trade secrets. So,
25 for all those same reasons, the answer to that is no.

1 Now, this last question is on damages if you did find a
2 breach of contract. Now, this is -- again, we think
3 there's no way the evidence will support getting here at
4 all; but if you do, there's an interesting thing here.

5 It says you may award one dollar if you
6 find that AutoData has failed to present proof of actual
7 damages. Now, it may seem like a trivial thing, like,
8 well, you know, what if I think there's something to
9 that, I'll award a dollar, it's no big deal, right?

10 Now, I can't go into the reasons, but I
11 can say this: It is extremely important if you ever got
12 to this question, extremely important, that the answer
13 to that question be zero. In other words, the actual
14 damages they proved, which is nothing, it is extremely
15 important to write zero rather than \$1 even though that
16 seems like a small difference.

17 Two final points and I'm done. A couple
18 things that I'd be interested to see from them, and I'd
19 ask you to listen for in their closing argument, number
20 one, are they going to show you any evidence at all of
21 anything that we gave to Toyota whatsoever that would
22 possibly implicate a trade secret. Listen to that,
23 let's see what they say.

24 Second, now, they claim that this --
25 there was a lot of debate about this schema, who

1 invented the schema, was it them, was it us, was it
2 joint, whatever. Mr. Krauss came in here and Mr.
3 Kneupper walked him through how he and his partner had
4 built the schema before AutoData ever came along.

5 Let's see if they can point to any
6 development documents of theirs where they are
7 developing, creating this schema before that ever
8 happened, let's see if they can show you that.

9 Now, with that, I'm going to sit down,
10 and Mr. Baxter will have about 17 minutes to close up.

11 Thank you very much.

12 THE COURT: Now, we'll take our afternoon
13 break at this point, but unlike -- well, let me just say
14 that it's important, I think, that you not --
15 particularly important at this stage that you not
16 discuss the case among yourselves because you haven't
17 heard from everybody, and we don't want you to, in
18 effect, start deliberating before you've heard from
19 everybody.

20 We'll take a little shorter break than
21 usual. Let's just take -- well, let's take a little
22 over 10 minutes, let's take until 2:25.

23 The other thing is the -- the -- by now
24 the copy of the instructions should be in there in your
25 jury room, but don't look at it at this point. You'll

1 have plenty of opportunity to do that. At this point,
2 just take the next 12 minutes to relax. Please be ready
3 to come back at 2:25. Thank you.

4 (Jury out.)

5 THE COURT: Okay. Absent any further
6 business, I'm seeing none, we'll be adjourned for 10
7 minutes.

8 (Recess.)

9 (Jury in.)

10 THE COURT: Okay. Are we ready? Thank
11 you.

12 MR. ADAMS: May I proceed, Your Honor?

13 THE COURT: You may, Mr. Adams.

14 MR. ADAMS: May it please the Court.

15 Ladies and Gentlemen of the Jury, I'm here to give our
16 closing statement on behalf of AutoData.

17 I wanted to start off by reminding you of
18 a statement -- actually a couple of statements that were
19 made at the beginning of this case by Versata. They
20 stated that AutoData was just a data company, that they
21 wanted to move into the software area that Versata was
22 in, and that the 2008 Chrysler contract was a
23 once-in-a-lifetime contract.

24 Well, we brought down Mr. Perrier,
25 Mr. Wedermann, and Mr. Otten from Canada, and they spent

1 their time here, and they explained to you the history
2 of AutoData, its product development, its data
3 development, and the services that they provided, and
4 the fact that they've had major automotive customers
5 since the early '90s up to the present.

6 So it's just false and misleading to say
7 that the Chrysler contract was a once-in-a-lifetime
8 opportunity. They know that we've been in this industry
9 from the beginning.

10 In fact, they developed this innovative
11 ACE technology that you've heard about. Mr. Perrier
12 testified that he met up with a customer, General Motors
13 Canada, who brought the idea to his attention. That
14 particular customer was having trouble comparing
15 different vehicles and really wanted a way to do it
16 automatically.

17 So Mr. Perrier brought it back to his
18 team. His team happened to be Mr. Wedermann and
19 Mr. Otten. And you'll recall Mr. Otten stating that
20 they kicked Greg out of the room and starting doing some
21 real work behind the scenes. I think Mr. Otten
22 testified that he and another gentleman kind of locked
23 themselves in a room and came out three days later, and
24 they had created the ACE technology.

25 Then we heard from Mr. Wedermann who

1 talked about how the ACE technology actually made it
2 into a successful commercial product called AutoQuote
3 Pro. Mr. Wedermann demonstrated that product for you, a
4 product that's been in the marketplace since '97/'98,
5 well before the patent application that was applied for
6 by Versata.

7 Now, I'd like to start by talking about
8 our trade secret misappropriation allegations. The
9 whole dispute started in the late 1997 time period. We
10 see some notes that Trilogy had in their internal
11 business records where they were keeping an eye on
12 AutoData.

13 They had already identified AutoData as a
14 company that had dynamic competitive compare. You heard
15 Mr. Van Dyke testify that he never even heard of
16 anything other than static compare, which is like
17 putting two brochures next to each other, yet their own
18 internal notes show that they were aware that AutoData
19 had not only dynamic competitive compare but other
20 software products as well.

21 And so obviously, they were interested in
22 meeting with AutoData to learn about their capabilities.

23 You heard how they invited AutoData to
24 come to Trilogy and respond to an RFP where they were
25 seeking information that would enable them to have their

1 own competitive comparison capability.

2 And the day after that meeting, the
3 Trilogy folks that were at that meeting, including
4 Mr. Van Dyke and others, put down in writing a report of
5 their notes from the meeting.

6 As you'll recall, they were very
7 complimentary and impressed by AutoData. They're good
8 guys to work with; they're smart; really raised the bar.
9 They already solved our problem of equivalent vehicle
10 compare, which is exactly what Trilogy was trying
11 develop themselves.

12 In particular, Mr. Van Dyke commented,
13 I'd like to second that these guys were obviously
14 bright. The capabilities they seem likely to be able to
15 provide, has sent my head spinning for the past day.
16 If that's not somebody who is impressed, I don't know
17 who is.

18 We heard Mr. Wedermann testify about the
19 meeting and how Trilogy seemed very interested in
20 learning about the details of their software and their
21 data capability. And he also has a distinct memory of
22 the meeting, because he remembers that he and
23 Mr. Perrier came down from Canada. They were dressed in
24 their Sunday best, and got into this meeting, met with a
25 bunch of recent college graduates, one who was in shorts

1 and flip-flops, and that happened to be Mr. Van Dyke.

2 After the meeting, AutoData reported what
3 they thought the purpose of the meeting was. And they
4 sent a letter to Trilogy, basically indicating that they
5 understood that Trilogy's critical business need was to
6 be able to provide their clients with the ability to
7 automatically comparably equip.

8 And if you'll recall, ACE is the acronym
9 for automatically comparably equip.

10 And, of course, AutoData respected their
11 trade secrets and didn't want anybody to use them
12 without authorization. And so Mr. Perrier reminded them
13 shortly after the meeting that even though they had
14 already signed the November 6th, 1997 confidential
15 agreement, he reminded them again: By the way, the
16 information we disclosed at the meeting is confidential.
17 Please respect my confidential information.

18 Then AutoData responded to the RFP
19 process. You will recall that it came in two sections,
20 but the second section had kind of a secret sauce or the
21 very most sensitive trade secrets. And so AutoData
22 provided those separately with extra non-disclosure
23 confidentiality protection.

24 It provided them a package of various
25 items, including tables, diagrams, databases, sample

1 files, and most importantly, it provided the ACE
2 algorithm. You've heard it called the pseudo-algorithm.
3 It just means that a human being can read it, and it
4 hasn't been converted into computer code yet as
5 testified by Mr. Otten.

6 Then we heard testimony from Mr. Van Dyke
7 and others about how several months later, they started
8 working on their product called SC Vehicle Compare.

9 After meeting with AutoData, they never
10 expressed any interest in jointly developing the
11 competitive comparison technology with AutoData.

12 They just decided they were going to move
13 on to something else, and they continued to develop the
14 technology themselves. And just a few months later,
15 after that November 1997 meeting, they were really
16 bragging about selling SC Vehicle Compare to Toyota.
17 Now, you've heard lots of statements in this case about,
18 well, it hasn't been developed yet.

19 Well, it was certainly developed far
20 enough along that Mr. Van Dyke testified that the
21 algorithm that was part of a specification they were
22 putting together for the Toyota project basically
23 described the work that he had done to develop his
24 algorithm. This is the algorithm that appeared in the
25 Toyota document.

1 And about that same time of this
2 description of the algorithm is when they made the sale
3 to Toyota of the SC Vehicle Compare and other products.
4 They definitely promoted that product when they entered
5 into this contract and received compensation in return.

6 It didn't matter that they hadn't built
7 it yet. They promised they would deliver it, if they
8 built it, and it was an item that they promoted, and it
9 was a product that they had, based on AutoData's
10 pseudo -- pseudo-algorithm trade secret.

11 Interestingly, we've heard a lot of
12 testimony about how they haven't built it as if they're
13 bragging and as if there's something wrong with the fact
14 that AutoData had their own ACE product that was
15 functioning and in the marketplace.

16 Now, very important part of the trial, at
17 least for me, was when Mr. Otten was testifying. At the
18 time, Mr. Cole was cross-examining him and went up to
19 Mr. Otten and showed him an excerpt of a document. So
20 it wasn't the complete document; it was just an excerpt.
21 And it turned out it was an excerpt from the Toyota
22 document that Trilogy had authored. Mr. Otten had never
23 seen that document before and was asked to review it on
24 the spot and asked: Does that look like your ACE
25 algorithm?

1 And he was very confident in saying yes.
2 He wasn't prepared to see that document. It was just
3 put in front of him. He instantly identified it as
4 AutoData's ACE algorithm.

5 Now, the other trade secret that's in
6 issue is the Ford schema. And that was provided
7 pursuant to a Master Services Agreement. So after
8 Trilogy and AutoData did not enter into a business
9 relationship regarding comparison technology, they at
10 least entered into a business relationship where
11 AutoData was going to provide data and data schema to
12 Trilogy so that they could fulfill their contract with
13 Ford.

14 At that time, AutoData was also a Ford --
15 also had Ford as a customer. You heard Mr. Wedermann
16 talk about how he had developed the schema and explain
17 in detail all of the details of it, the fact that when
18 he developed it, the uniqueness of it, and the fact that
19 AutoData kept it confidential and trade secret.

20 The schema, as you saw near the end of
21 the trial, had a notation at the top that it was
22 authored by Mike Ryksen, who was an AutoData employee,
23 ADMS -- that's AutoData Marketing Systems -- and that
24 the schema was dated 1998 and was copyright-protected to
25 ADMS.

1 This schema was attached to the
2 agreement, so it wasn't just like a draft document
3 floating around. Both parties decided that the contract
4 would be based on the schema that was attached as an
5 exhibit.

6 Mr. Wedermann explained that the schema
7 did include some sections that were provided by Trilogy.
8 He wasn't trying to claim credit for the whole thing.
9 He just explained that the core part of the schema was
10 his and how he had incorporated Trilogy's contributions.
11 Mr. Wedermann's contribution is the section highlighted
12 in yellow, and Trilogy's -- Trilogy's contribution is
13 the section highlighted in green. And then you heard
14 from Mr. Stubblebine who explained how that schema
15 somehow ended up in the Toyota project. So we now have
16 two trade secrets that were disclosed to Trilogy that
17 Trilogy decided to use for the Toyota contract.

18 Now, as you'll be instructed -- or as you
19 were instructed by the Court, trade secret
20 misappropriation doesn't require that anybody be a bad
21 actor.

22 Now, I don't know what happened with
23 regard to the trade secrets and how they ended up in the
24 Toyota project. I have my suspicions, but I don't know
25 for sure. I suspect it was just a bunch of young recent

1 college graduates, young engineers who were working
2 hard, probably weren't even told that this was being
3 provided under a confidentiality agreement. They were
4 probably told go meet with these guys, see what
5 capabilities they have, and see if you can develop some
6 projects.

7 You recall that they have this boot camp
8 at Trilogy for new-hires and were expected to perform
9 and develop new products, and they wanted to impress the
10 president of the company, Mr. Liemandt, with their
11 innovative ideas.

12 And so, again, who knows why these trade
13 secrets ended up in Toyota, and we're not blaming
14 anybody, and we don't have to prove that it was done
15 with bad intent. All we have to show is that we had
16 trade secrets and that those trade secrets were used by
17 Trilogy for the Toyota project.

18 Now, I think opposing counsel is trying
19 to mislead you when he says there's no evidence that
20 Toyota received those trade secrets. Basically, what
21 he's saying is, if I steal the Coca-Cola formula and
22 develop my own Coke product, and then I sell the Coke
23 product, the person who buys the Coke product doesn't
24 have the trade secrets. That's right.

25 We're not saying that Toyota has the

1 trade secrets, because they're hidden behind the scenes
2 in the code. But they were used by AutoData to come up
3 with those products.

4 Now, let's turn to the jury charge and in
5 particular, I want to see Question No. 8. Here you'll
6 be asked to decide, did Trilogy violate either the
7 Master Services Agreement or the November 1997
8 confidential agreement. And we believe you should
9 answer yes.

10 It's clearly more likely than not that
11 AutoData's trade secrets ended up in the Toyota project.
12 There's lots of evidence, lots of documents that show
13 things just don't add up.

14 How does a company want to get vehicle
15 comparison technology, meet with a company that has it
16 already in the marketplace, and then suddenly a few
17 months later, they have their own technology.

18 Well, let's -- let's turn to Question No.
19 6. So Question No. 8 was, did they breach the contract.
20 Question No. 6 is, did they misappropriate the trade
21 secrets.

22 Here, we have three things that we need
23 to establish that it was a trade secret. There's been
24 plenty of evidence, I believe, to establish that. We
25 have to establish that it was not of general knowledge.

1 I think that's been fairly well-established.

2 And we also have to establish that
3 AutoData took reasonable measures to protect it. You've
4 heard about the measures they take internally at
5 AutoData to not let their trade secrets out. They
6 signed confidentiality agreements that remind people
7 that receive their trade secrets to respect and abide by
8 those confidentiality agreements.

9 So I think there is plenty of evidence in
10 the record to prove that they did protect their trade
11 secrets.

12 Now, let's go back to the PowerPoint. I
13 want to go back to the AutoQuote Pro technology, because
14 this is the main piece of, quote, prior art that we're
15 relying on to claim that the '821 patent is not valid.
16 And despite what you've been told, the Judge did not
17 instruct you in the jury instructions that Defendants
18 have a burden to go through a death march through each
19 of the claims and each of the claim elements.

20 We believe Dr. Stubblebine did a
21 sufficient job establishing -- with a representative
22 claim why that claim was invalidated by the AutoQuote
23 Pro. We don't need to march through each of the claims.
24 He clearly testified that his analysis would have been
25 the same for the other claims. It would have been a

1 waste of time to repeat it for all 10 claims.

2 As I've already indicated, AutoQuote Pro
3 was in the marketplace in the '97/'98 time period, well
4 before the filing date of the '821 patent. You saw it
5 in operation in the courtroom.

6 You saw how Mr. Wedermann was able to
7 configure one vehicle and then was able to hit a
8 button -- well, he was able to pick a second vehicle,
9 decide in the first vehicle what features were
10 important, like engines, transmission, stereo, whatever,
11 and then hit a button, and the second vehicle would be
12 comparably equipped with the same type of equipment.

13 Now, Versata alleges that that's not --
14 that's not sufficient to establish invalidity, because
15 the AutoQuote Pro system didn't follow the one -- first
16 computer/second computer language of the patent claims.
17 I believe Mr. Wedermann testified, no, the AutoQuote Pro
18 system did work with more than one computer. It did
19 have a first computer and a second computer.

20 We acknowledge that the first computer
21 and the second computer do slightly different things
22 that what the claim talks about, but I think it's pretty
23 inherent that it wouldn't be that big of a stretch to
24 say, well, okay, let's have the second computer do what
25 the first computer was doing.

1 Nonetheless, Mr. Wedermann testified that
2 at the same time the AutoQuote Pro product was in the
3 marketplace, they had a contract with a company called
4 ARI who asked them to take their technology and put it
5 in a web-based environment. That web-based environment
6 had a client server structure just like the Internet.
7 And so at the same time they had AutoQuote Pro, they
8 also were modifying their software products to work on
9 the Internet, and Mr. Wedermann testified it only cost
10 them \$35,000. Well, they only charged \$35,000, I should
11 say. So it wasn't like it was an expensive, complicated
12 project that AutoData was expecting to make a lot of
13 money for.

14 There's one other important issue with
15 regard to invalidity. It's called the on-sale bar
16 issue. In most countries, as soon as you sell an
17 invention, a product containing an invention, you can no
18 longer get a patent, but in the United States, the
19 Patent Office gives you one year from the date you sell
20 your product to apply for a patent application.

21 Here I think there's plenty of evidence
22 that the SC Vehicle Compare was on sale and in the
23 marketplace in the June 1998 time period. And as the
24 Court just instructed you, you don't have to have a
25 working product to establish on-sale bar. You just have

1 to show that the product is ready for commercial
2 production.

3 It doesn't have to be technically
4 perfected. You just have to have the essence of the
5 invention, and that's -- the algorithm that was
6 described in the Toyota document is the essence of the
7 invention as multiple witnesses have testified to. All
8 they had to do is go to the next step and convert that
9 algorithm to computer code.

10 So let's go back to the jury charge, and
11 I want to go to Questions 1A and 1C.

12 So with regard to 1A -- I'm sorry --
13 let's start with 1B. With regard to 1B, this is where
14 you're asked, does the AutoQuote Pro basically, by
15 itself, indicate that the '821 patent is invalid. And
16 we think the answer is, yes, because their distinction
17 regarding first computer and second computer, we don't
18 think, is significant enough to argue that it's not
19 prior art that invalidates their technology.

20 But even if you don't agree with that,
21 let's go to 1C. You will get the opportunity to decide,
22 even if the difference is computer one and computer two,
23 would it have been obvious to take the AutoQuote Pro and
24 put it in a web environment where a first computer and a
25 second computer were doing what the patent covered?

1 Given the fact that AutoData did do that at the same
2 time they had AutoQuote Pro in the marketplace, I think
3 the answer has to be yes.

4 Now, finally, with regard to
5 infringement, Versata claims that we're not disputing
6 infringement. That's not the case at all. Our main
7 argument is the patent's invalid. And you can't
8 infringe an invalid patent. That's our primary
9 argument.

10 Nonetheless, it's not our burden to prove
11 we don't infringe. That would be like it would be our
12 burden to prove we didn't steal.

13 No, that's not the way burden of proof
14 works. They have to prove that we infringe.

15 And let's go back to the PowerPoint.

16 We don't think they've satisfied their
17 burden. You heard Versata's own expert indicate that
18 the ACE engine does not infringe the '821 patent. Their
19 other expert said it did. Their own experts are
20 conflicting on whether or not the ACE technology
21 infringes.

22 Nonetheless, they argue that the AOL
23 technology infringes. Their expert acknowledges that
24 the AOL technology does not contain the ACE engine, but
25 he says that AutoData infringes, because we sell data to

1 AOL. That's all we do, is we give them data, and
2 somehow that means we are indirectly infringing the
3 patent.

4 We asked them, well, who's infringing the
5 patent then?

6 He said the consumers, the people that
7 use the website are infringing. And we're inducing them
8 to infringe apparently by selling data to AOL. That
9 just doesn't make sense.

10 So let's go back to the jury charge.

11 Question 1A and 1 -- 1A asks, did Versata
12 prove by a preponderance of the evidence that AutoData
13 directly or indirectly infringed the '821 patent?
14 We think the answer is no as to all those claims.

15 Thank you.

16 THE COURT: Thank you, Mr. Adams.

17 Mr. Ruiz.

18 MR. RUIZ: Thank you, Your Honor.

19 I'm the second runner in the relay, so
20 I'm the one who didn't get a break, but I don't want to
21 end today without first thanking each of you. You've
22 taken a week out of your lives to come and do your civic
23 duty and help solve a dispute that's very important to
24 AutoData.

25 You heard Mr. Adams say that the three

1 most senior people from AutoData flew down here from
2 Canada, and even put themselves in the hot box and swore
3 under oath to tell you the truth, because it's that
4 important to them.

5 And each of you are going to help make a
6 decision that will hopefully end the last -- three years
7 and nine months of litigation they had to experience.

8 You heard about some litigation in 2000
9 and 2001, and they had that seven years of peace, and
10 now they've had another three years of litigation. And,
11 hopefully, your decision today will help bring peace, at
12 least for seven years, and hopefully more.

13 So I'm going to talk to you about the
14 claim that actually has us here in Marshall, Texas.
15 Versata sued AutoData, claiming that they made a
16 misstatement. Now, when you're trying to figure
17 something out, you learn in grade school you ask those
18 questions. And what are the questions?

19 It's who, what, where, and how. So let's
20 talk about this misstatement.

21 Who said it?

22 When I'm done, you're going to have less
23 than 20 minutes left, and there's no more evidence. And
24 maybe they'll tell us, but who made the statement that
25 they claim is the basis of why we're all here?

1 They've never identified who made it.
2 And they've never identified who it was made to. So we
3 don't know who made this alleged misstatement and who it
4 was made to. You won't see a single document that
5 identifies it.

6 Then we don't know what was said.
7 They've never even brought up what was said that has
8 dragged us all here today.

9 Nor have they brought up where it was
10 said. We heard about the conversations at the lunch,
11 the sushi lunch we heard about. We've never heard about
12 where this supposed misstatement was made, and we don't
13 even know when it was said. No one has told you when
14 the statement was made.

15 And finally, we don't know how -- even if
16 the statement was made, how it affected Chrysler's
17 decision to terminate Versata and award the contract to
18 AutoData. They talk about proving stuff with
19 specificity.

20 They haven't proved any of these, and
21 maybe when Mr. Baxter comes up to conclude this trial,
22 we will finally get the answer to all these questions.
23 Now, you remember, again -- well, I left one off. I
24 left off why. And the question is, why are we here,
25 then? If they haven't proved any of those, why are we

1 here?

2 And I think it's all captured in this one
3 bit of testimony from Mr. Sullivan, who's an integral
4 witness in this case. And what did Mr. Sullivan say at
5 that famous sushi lunch?

6 (Video clip playing.)

7 QUESTION: In any event, at this lunch,
8 tell me what you remember about this discussion.

9 ANSWER: I remember that -- that -- that
10 he was upset and he said that -- that we like to win,
11 and when we don't win, we sue; that he told me that they
12 had taken litigation against others.

13 (End of video clip.)

14 MR. RUIZ: Now, you heard Mr. Jacops
15 testify that Mr. Sullivan was a good friend of his, and
16 Mr. Sullivan -- Chrysler is not in this lawsuit. They
17 have no dog in the fight, but yet he goes out and he
18 says: Mr. Jacops, my friend, told me straight out, when
19 he wanted that contract, if he doesn't win, he sues.
20 And you heard about the RFP; we discussed it. And the
21 RFP is Defendants' Exhibit 195. And one thing you'll
22 notice about the RFP -- we heard testimony that Chrysler
23 was very important to them to do two things.

24 One, they wanted to finish the launch of
25 the website in 100 days, so they had very strict

1 deadlines. And, two, they wanted it to be cheaper.
2 They needed cost savings. And that was some of the
3 criteria that was involved.

4 So Chrysler submits the bid. Does
5 Versata get it?

6 Let's look. Let's go to the next slide.
7 Defendants' Exhibit 198, the termination letter.
8 Versata's contract with Chrysler is terminated on April
9 29th, 2008. Chrysler says we're terminating your
10 agreement. We'll give you the 90 days' notice that we
11 need. So Versata has now been terminated by Chrysler.

12 So do the RFP. They submit the bid.
13 Now, you'll see in the schedule in the RFP, which is
14 Pages 29 and 30 of the RFP, it has the timeline that
15 Chrysler is going to go through the RFP process. And it
16 says you submit your bids by March 31; within the next
17 two weeks, we're doing a presentation. We'll invite
18 everyone down to do a presentation.

19 Plaintiffs' Exhibit 309, this is a very
20 important document, because in this document -- it's the
21 document that the Versata people wrote, reporting back
22 about what happened at that presentation. And you'll
23 see quotes like: Well, the guy told me
24 sorry-to-see-me-go speech. And then another person
25 says: You know, a Chrysler person came up to me and

1 apologized for how badly we were treated at the
2 presentation to Chrysler.

3 But more important, these are the
4 decision-makers. These are people who are interviewing
5 Versata for the job.

6 Next slide.

7 One of the Versata people report back
8 that Versata isn't really going to make the final
9 consideration, because their pricing's too high. So why
10 did Chrysler -- why did Versata lose?

11 Well, they lost for price. And the price
12 shows up right off the bat. And they're trying to --
13 they aren't really going to make it, because their
14 pricing is too high.

15 So Chrysler never intended to hire
16 Versata. In fact, you heard that Versata finished third
17 out of three. Number two was Chrome, and you've heard
18 they've gone out of their way to say, well, Chrome
19 couldn't even meet the technical requirements.

20 So what does that say about Versata's
21 chances of being hired by Chrysler that they finished
22 behind Chrome in the process?

23 So what was next? Quality concerns.

24 On the quality concerns we heard from Mr.
25 Bing Burris. And he testified that with Chrysler, they

1 were having difficulties, that it was challenging to get
2 Versata to make changes to the site and that they were
3 expensive. And he said and that's why they decide to
4 terminate them. That's why you do an RFP, to change out
5 who provides it.

6 So Versata was let go, because Chrysler
7 wasn't happy with their work. So there were quality
8 concerns.

9 And what else does Mr. Burris say?

10 He says also, Versata was litigious, and
11 he said that there was concern -- they had an estranged
12 relationship with Versata at times, and I think there
13 was some concern that Versata was litigious or could be
14 litigious. Chrysler wanted to cut its ties with
15 Versata, because it felt that having them as a partner
16 risked getting in a place where they'd be sued by
17 Versata.

18 And if you recall, there's a pattern
19 here. When AutoData and Versata were partners in 2001,
20 it wound up in litigation. So Chrysler wanted to make
21 an exit.

22 So what they're trying to tell you now
23 is, well, that's not why all these people at Chrysler --
24 who, again, have no dog in the fight -- they're not
25 really telling you the truth. We lost because AutoData

1 basically either lied on their resume or lied in their
2 job interview. They misstated some facts.

3 Well, let's see why AutoData won. Again,
4 Mr. Jacops' good friend testified that when AutoData
5 replaced Trilogy, the speed of the upload was reduced
6 from six weeks to one day.

7 And also Chrysler saved \$3 million a year
8 going with AutoData. And most importantly, his managers
9 stopped complaining to him. That's why AutoData won.
10 They went to the presentation. They impressed everyone,
11 and they got the job.

12 You also heard Mr. Sullivan say that
13 after he met with Mr. Jacops, that it was Mr. Jacops who
14 told him that AutoData only had a partial license, and
15 he talked to his legal staff. And this is Chrysler's
16 Legal Department, which is a large organization. And
17 they said they had no problem with giving the work to
18 AutoData.

19 So, again, AutoData won because they were
20 the better provider at a lower cost.

21 Now, let's go and look at the resume.

22 Now, obviously they had to file a
23 response to request, and I want you to look at
24 Defendants' Exhibit 192. This is AutoData's response to
25 the Chrysler request.

1 Now, you remember when we went through
2 the one for Versata, they had all the stuff about all
3 their intellectual property rights and their legal
4 rights. You notice they never showed you one sentence
5 in this response to Chrysler's request for quote that
6 was false. They never showed you one sentence in this
7 request that talks about any license to a Versata
8 patent.

9 This is quite a lot of information
10 they're submitting to get the job. Not a single thing
11 in here was false, and they never showed you anything
12 was false.

13 So what is the basis of their claims?

14 Well, the basis of their claims comes
15 from Mr. Jacops, and, again, it's the sushi lunch. And
16 he says that -- now, Mr. Jacops is no longer an employee
17 at Versata. And it's important to note that not a
18 single officer or an employee came here today or this
19 week to testify or even be present. They didn't bother
20 to show up on a case that they say is very important to
21 them.

22 Instead, it's consultants they have paid
23 to show up here and testify. So Mr. Jacops, he may be
24 paid as a consultant to be here, but I don't think he
25 was going to lie for \$625 an hour.

1 And what does he say? Does he say that
2 Mr. Perrier said that -- told Mr. Sullivan that there
3 was a license on June 1st at a meeting at a Starbucks?
4 No. Instead, he says that he was told there may be a
5 company that says that they have a license to the
6 intellectual property portfolio, and that -- would that
7 be a problem. He said we never mentioned any company.

8 And Mr. Sullivan said, well, there may be
9 a company that said it, not that there was or that one
10 did, nor did he say which company or where he heard it
11 from. He could have heard it from another Chrysler
12 person, if anything similar to that was said. He just
13 said, well, there may be a statement.

14 That -- if that's the case, then every
15 time a person gets hired over another person or gets
16 business over another person, all a company has to do is
17 say, well, I heard that someone told me that you made
18 some false statement to get the job, so I'm going to sue
19 you. And everyone can be here one day.

20 That's really the position that Versata's
21 taken. They don't have to prove who said it to who,
22 when it was said, and what was said. If they lose the
23 job, they can drag you to court.

24 So when someone accuses someone of lying
25 on a resume or a job interview, how would you figure out

1 if it was done?

2 Well, let's talk to the people in the
3 meetings. Mr. Sullivan again: Did anyone at AutoData
4 tell him that they had a patent?

5 Well, he says no. He really asked them
6 if they were legally allowed to do it.

7 And then Mr. Jacops says, when we asked
8 him, well, did AutoData need a license to comply with
9 your RFP, and he says obviously, no, because they
10 complied.

11 And you heard when we took him on the
12 stand, none of the patents they put in their RFP
13 response are infringed by AutoData doing the work for
14 Chrysler until 2010. They sued in 2008, August 8, 2008.
15 And that's important, because in August 8, 2008, you
16 heard Mr. Ephlin say that he got called by Chrysler,
17 because someone read an article in the newspaper, and he
18 said it was ever what the newspaper said.

19 And the newspaper talked about the
20 complaint, and in the complaint Versata -- the
21 allegations they made here today, they made in the
22 complaint. They filed it with the court, and it became
23 a public record. They told the entire public we had a
24 limited license agreement, and we believe AutoData lied
25 about it.

1 So everyone knew at that point in time,
2 but yet even then, they never said who said it to who,
3 when, what was said, and the impact.

4 So who else talked about this?

5 Well, Mr. Burris. What did Mr. Burris
6 say? They asked him, did anyone in the process have any
7 conversations about licenses?

8 No, I don't recall that.

9 Is it fair to say that part of the RFP
10 process you didn't have any discussions with anyone
11 concerning the extent of the license?

12 Right. That's fair.

13 So the two people who supposedly would
14 have been the ones who heard it both said, no one talked
15 to me about licenses and patents. So we -- so
16 obviously, then who was it said to?

17 Well, what else does Mr. Burris say?

18 Well, he says, we go to the how. Let's
19 assume it was said. Would it have impacted it? What
20 decision -- was the decision to use AutoData based on
21 any license?

22 And his answer was no.

23 So even if the statement was made,
24 Mr. Burris says that wasn't the reason why they were
25 hired. And you heard Mr. Mills on the stand, their

1 damage expert testify, it was a but-for analysis.
2 If AutoData was hired for any reason, other than
3 misrepresenting a license, the damages are zero. He
4 testified if -- if the statement was not the reason why
5 Chrysler hired AutoData, their whole case falls apart
6 and the damage is zero.

7 Well, we heard from Chrysler, and their
8 whole case falls apart.

9 Now, what did Mr. Jacobs say?

10 He said they didn't need a license to
11 comply.

12 Now, was a license required?

13 Let's go to the next one. We're going
14 backwards. We need to go forward.

15 MR. KING: That's it.

16 MR. RUIZ: I'm sorry. So license
17 required? No.

18 Let's move. Okay. Let's go for it.

19 All right. So let's go to the damages.

20 On the misappropriation of trade secrets,
21 in this case, AutoData is accusing Versata of
22 misappropriating his trade secrets. In essence, to go
23 with another analogy, AutoData is saying that Versata
24 used someone else's work and entered it into the science
25 fair competition, that AutoData didn't come up with it.

1 Now, if someone accuses someone of
2 entering someone else's work in the science fair
3 competition, how do you determine if it really was their
4 work?

5 It's pretty simple. You say here, show
6 me how you did it. Do it again without the help of
7 others.

8 And what have we learned?

9 Versata can't do it. It's 2012. They
10 still can't do competitive vehicle compare. If it was
11 their own work and they invented it in 2000 as they say,
12 why can't they build it? Why haven't they expanded on
13 it?

14 Everyone testified that configuration and
15 comparison is where the industry is going. Twelve years
16 later, they still haven't figured out how to do it,
17 because it wasn't their work.

18 Now, you heard AutoData on the other
19 hand, they have built all these other products on it.
20 They keep on upgrading their product, because they know
21 how to do it. It is their work.

22 So they showed you a document from
23 Mr. Jacobs, his testimony saying, I don't know if -- if
24 SC Compare has my trade secrets.

25 But if you'll notice on the exhibits,

1 you'll see just about all the documents have below them,
2 Attorney's Eyes Only, Highly Confidential. And you
3 heard Mr. Jacobs, Mr. Wedermann, and Hans Otten testify,
4 I wasn't allowed to see any of the documents. I mean, I
5 was told I couldn't. You have to defer to the experts.

6 So, what were the experts, what did they
7 say, the ones who were actually allowed to see the
8 Trilogy documents. Dr. Stubblebine and Mr. Ratliff,
9 they both testified if you look at their documents, what
10 Mr. Perrier didn't get to see, you'll see the
11 misappropriation. And they found there was
12 misappropriation.

13 And the law says that if Versata steals
14 AutoData's trade secrets, it has to turn over the net
15 profit resulting from that misappropriation to AutoData.
16 And Mr. Ratliff got on the stand and he said the two
17 other contracts, the net profit was \$2-million. You
18 didn't hear Mr. Mills dispute that. He never disputed
19 it because it was \$2-million.

20 So, let's go to the verdict form, and
21 let's go to the breach of contract claim. Now, the
22 breach of contract claim, the confidentiality agreement
23 is Defendants' Exhibit No. 30, it's a pretty short
24 document. And in this document, you'll see that any
25 information given or disclosed to Versata was only

1 allowed to be used as authorized by this agreement.
2 That didn't include giving it to Toyota, that didn't
3 include giving it to anyone else.

4 The Master Services Agreement is
5 Defendants' Exhibit No. 61, and this document, same
6 thing, it restricted the use only to the projects in
7 this document and no other use.

8 So, when we get to this question, did
9 they disclose or use the trade secret information, the
10 answer is yes. And with respect to the damages, you
11 heard Mr. Perrier testify that he wants his stuff back.

12 So, did he want to go and sue for breach
13 of contract damages? No. But did they breach? Yes.
14 And the answer should be a dollar.

15 If we go to the misappropriation
16 question, since the cat's out of the bag, since they've
17 got a patent which they're now suing us on and they
18 publicly disclosed the algorithm, did AutoData, did they
19 prove there was a trade secret and it was
20 misappropriated? Well, did they take reasonable
21 precautions? Yes. NDAs, three of them, the MSA has a
22 confidentiality agreement.

23 Next slide.

24 So, what were the damages? It was
25 undisputed. The profits from Toyota which the Court

1 instructed you that if you find that they
2 misappropriated the trade secret, Versata has to turn
3 over all their profits. That's the law. Undisputed,
4 \$2-million because they should not have gotten that
5 money by using our trade secrets to get the work.

6 And then the final slide is the breach of
7 contract.

8 So, why sue? Why does Versata want to
9 sue? Well, you see why they want to sue. All the
10 executives of AutoData are in this courtroom. The last
11 week they've been here, they haven't been working to
12 develop new products, they haven't been working on
13 developing new clients. They've had to have been bogged
14 down and spend their time and resources on litigation.

15 Versata, on the other hand, they don't
16 have to be bogged down because they can hire people to
17 show up. Smart, hard-working young businessmen who give
18 quality work and save their customers a substantial
19 amount of money should be rewarded, not sued by big
20 plotting competitors who are just disgruntled because
21 they didn't get the work and they keep on losing work.
22 I mean, this isn't about unfair competition, it's about
23 free competition. If people can't compete freely and
24 fairly, then small businessmen will never move up
25 because the big companies can always just sue them and

1 bog them down to keep them down.

2 On the other hand, if big companies go
3 and steal small businessmen's trade secrets and use it
4 for their own gain and for a competitive edge, the law
5 says they need to pay for it. And we believe that --
6 and we ask you the jury to send a message that that
7 conduct is not permitted and is not acceptable in this
8 community.

9 And I want to thank you again for your
10 time.

11 THE COURT: Thank you, Mr. Ruiz.

12 MR. RUIZ: Thank you.

13 THE COURT: Mr. Baxter?

14 MR. BAXTER: May it please the Court.

15 I really do love trials. I've been doing
16 it all my life. But I'm glad this one's over, and one
17 reason is that you've unfortunately had to witness
18 something that you don't see too often. You've seen
19 witnesses from the other side that were willing to say
20 and do anything to try to win this lawsuit. And that's
21 really a very sad proposition, folks. And I wanted to
22 go over some of that and show you exactly what the facts
23 are and why their case against us amounts to nothing
24 except some fabrication. And then I'm going to go back
25 and explain why you need to find for Versata both on the

1 patent case and on the breach of contract case.

2 But let's start if we can, please, with
3 what their claim really is about. And the first claim
4 is that they said we stole their trade secrets and we
5 gave them to Toyota. As a matter of fact, you'll find
6 that in the Judge's question is did we, in fact, give
7 that information to Toyota? And I was struck today,
8 it's one of those moments that happens in a trial maybe
9 once in a decade when a lawyer slips up and tells the
10 jury what the evidence really is.

11 And that happened today with Mr. Adams
12 when he's questioning our expert today, and he says,
13 okay, I haven't heard any testimony of anybody giving
14 any trade secrets to Toyota, have you?

15 And so, apparently after a week of trial,
16 after trying to prove that we stole their trade secrets
17 and gave it to Toyota, Mr. Adams in a moment of candor
18 said, I haven't heard any evidence from anybody that we
19 gave -- Versata gave trade secrets to Toyota, have you?
20 And our expert had to agree he hadn't heard any evidence
21 about that either.

22 But yet, even this afternoon they still
23 want to complain to you and say, oh, they stole our
24 stuff. And that stuff, as they put it, is two things.
25 Number one, they said we took their AutoData Compare and

1 we put it into our project and we sold it to Toyota.

2 They said that this afternoon. Even though all the

3 documents and all the evidence says otherwise.

4 As a matter of fact, we asked Mr. Perrier
5 about it; and he had to say when we asked him if, in
6 fact, there was a SC Compare functionality at Toyota, he
7 had to say, no, there's not, I've never seen it, it
8 doesn't exist, they don't have it.

9 And so, I was kind of wondering why they
10 were still pushing this theory that, in fact, Toyota had
11 it. I don't know to this minute because all the
12 evidence says contrary, Mr. Adams says it, Mr. Perrier
13 says it, the documents say it, and the experts say it.
14 So, you've got to ask yourself, why do they still
15 continue to try to push a position that is just
16 factually wrong. And I guess they want to win so bad
17 because they'll take those facts and say white is black
18 and black is white, and it doesn't make any difference
19 to them. And that's just not right.

20 The other thing that they said we stole
21 was the schema, that they developed a schema for Ford
22 and we gave it to Toyota. Now, if you don't take any
23 other document back in the jury room with you, please
24 write down Exhibit No. 234, it's Plaintiffs' Exhibit
25 234. It's a little long, but I'm going to go through

1 it, and I think you're going to find it very
2 instructive, and it proves the point about why, in fact,
3 this has been sort of a sad case. If you look at the
4 document --

5 And, Mr. Diaz, I want you to go to the
6 exhibit number or the page number which is 050 in that
7 document.

8 And this is a handwritten set of notes
9 addressed to Mr. Adams Stein at Trilogy, and it comes
10 from Mr. Mike Ryksen. Now, the truth is that Mr. Ryksen
11 was the only developer they had working on this product.
12 Mr. Wedermann never told you that he, in fact, did not
13 write one line of code on this project, not one. He was
14 a salesman by then. He didn't do development. He
15 didn't write code top side or bottom. But Mr. Ryksen
16 did, and he was really the only one they were talking
17 to. And if you'll look at 234 at Page 050, 0-5-0, there
18 is a e-mail, a fax actually, that he sends to --

19 Go to the next two pages, if you would,
20 please, Mr. Diaz, one more, one more.

21 This is in his handwriting. And he, as
22 you heard, received from Versata the schema that Versata
23 wrote. As a matter of fact, they had the backbone, they
24 had all of this written already, and they sent it to
25 him. The problem is he didn't know how to do it, he

1 didn't know what it meant. And instead of all those
2 boxes that you saw being his, that's not true. Look at
3 the document. He starts listing out questions. And the
4 e-mail that's attached to it has even more questions.

5 He says, Part class, should division ID
6 be included here, question mark; number field, what is
7 this used for; description field, should this be
8 included, not in table; what's the difference between a
9 description and a name; part, what's the difference
10 between a description and a name; price rules, not sure
11 what they're used for; include packaging part, what is
12 this used for?

13 He doesn't know.

14 Part, price rule, what is the
15 relationship with the other table; general questions,
16 option groups, how do you handle this? The answer was,
17 by the way, you don't have to put them in. Option
18 variations, how do you handle this?

19 Those never even made it into the schema.
20 Look at the entire document, and you will see all the
21 questions they were asking, and then you can match up.
22 If you take that document, the document that we sent
23 them, and it has all these headings where we explain to
24 them what we want the schema to look like and how we
25 developed it and how they're going to populate with

1 their data, and it matches up exactly to the boxes in
2 the diagram that you saw that they're trying to claim
3 credit for.

4 Now, we put Mr. Krauss on the stand to
5 explain how it got developed. And I'm thinking, you
6 know, if I'm going to cross-examine Mr. Krauss because
7 the case comes down to this, Mr. Krauss said we
8 developed it, they did not.

9 So, here's how that cross-examination has
10 to look like. Oh, Mr. Krauss, you say you developed it,
11 let me show you all these development documents we got
12 from AutoData. Not one. Not a page. Not even a
13 question. I wanted to ask him, well, look at this box
14 here, doesn't it say copyrighted, it says, copyrighted
15 for AutoData? I mean, if they worked on it together, it
16 wouldn't be copyrighted anyway.

17 And he says, well, look, it says, Mr.
18 Ryksen did this. He said, yes, when you generate it off
19 Mr. Ryksen's computer, it's going to put his name on it.
20 But he didn't write any of it. And they didn't ask him
21 a single question about that, nor show him a single
22 document in which they actually developed it.

23 That, ladies and gentlemen, tells you
24 everything you want to know about their case and what
25 about what their witnesses will do because their

1 witnesses will try to take credit for something they
2 didn't do, and they will try to prove that we made
3 something that we didn't make in spite of all the facts
4 to the contrary, and that's just not true.

5 Now, if you look at the rest of the
6 documents, for example, if you write this number down,
7 246, write down Exhibit 246, and this is a document from
8 Mr. Krauss written in September of 1999. And in
9 September of 1999, he doesn't know anything about a
10 lawsuit, he doesn't know that there's a controversy
11 about who wrote the schema, he knows nothing. But
12 here's what he writes, I used and published this schema
13 to ADMS, that's AutoData, for Ford and CarOrder uses the
14 same schema for their data providers.

15 Contemporaneously when this is going on,
16 there are documents that you have access to that Mr.
17 Krauss wrote that says, I wrote the schema. And you can
18 look at the documents he sent AutoData, and they don't
19 understand them, and they have to ask questions about
20 them because they can't write this schema. And that
21 tells you everything you want to know about their case.

22 Now, let's go back to our case just a
23 moment. The first is patent infringement. And I heard
24 something I hadn't heard before. Well, I know we didn't
25 put on any evidence that we don't infringe, our expert

1 never mentioned it, he didn't go through the claims and
2 explain how we didn't do this, and we didn't do this;
3 but just trust me, we don't infringe. Then he says,
4 wait a minute, okay, so we do infringe, the patent
5 invalid.

6 Now, what's the problem here is you heard
7 our expert, Dr. Nettles, say if you're going to show
8 invalidity, you've got to go through the claims, each
9 one of them, just like we did on infringement, and show
10 that that's in the prior art, that it's in the Auto Pro
11 (sic), wherever it is. They didn't do that. And the
12 reason they didn't do that, their excuse is, oh, it
13 would take a lot of time, we weren't interested. The
14 reason they couldn't do it is because they don't have
15 the proof that it did everything in our patent. As a
16 matter of fact, they skipped elements. Even the ones
17 they went through, they skipped elements.

18 And you can't just say, well, wait a
19 minute, I've got some evidence that we had prior art on
20 this element, the rest them we're just going to skip,
21 you can't do that. And the Judge told you you couldn't
22 do that, and you follow the charge on that.

23 It's absolutely essential that they prove
24 that each and every element of every claim was in the
25 prior art, and they didn't even try. Now, that damage

1 award, by the way, is \$137,000. We're not trying to
2 gouge anybody over that.

3 The other claim is that they, in fact,
4 interfered and they breached the contract with us. Now,
5 let's talk about the breach of the contract, how did
6 that come about. You'll remember there was litigation
7 between these two parties before. But not that we were
8 litigious, they sued us. And I asked Mr. Perrier on the
9 stand, well, wasn't that litigation frivolous; and after
10 a few hems and haws, he finally said, yes, it was
11 frivolous.

12 Now, when we asked him on his deposition,
13 and I showed it to him, he said absolutely not. But now
14 he's in front of a jury, and I guess all the evidence
15 has been discovered, and he thought he ought to fess up
16 and tell the truth.

17 And he said, okay, that lawsuit is
18 frivolous.

19 Well, what happened?

20 Well as a result of that, they settled a
21 lawsuit, and they had to, as part of that, enter into an
22 agreement that if they got as part of the compensation
23 in that lawsuit, when we were going back and forth, the
24 rights of one of our patents, they couldn't reveal that
25 to anybody. And they agreed to it, and they were in

1 such bad shape in that lawsuit, they had to agree to it.

2 You know, when you got the short end of
3 the stick, sometimes you just have to do stuff you don't
4 want to do. And I've never seen that provision in a
5 license before, but they had to do it this time.
6 So what did they do?

7 Well, we know from a certified fact from
8 both Mr. Perrier and from his subordinate, Mr. Ephlin,
9 that at a minimum, they revealed to Chrysler that they
10 had a license to something of ours, and that breached
11 the contract right there.

12 But more importantly -- and here's what
13 counsel wanted to know about -- more importantly, did
14 they tell them they had something broader?

15 And that's when we get down to the sushi
16 lunch, and it's undisputed about what happened there.
17 What happened is Mr. Sullivan, who works for Chrysler,
18 out of the blue tells Mr. Jacobs that one of the
19 competitors -- and there's really only one; Chrome
20 really isn't a competitor -- has indicated to Chrysler
21 that they have a portfolio-wide license.

22 What that means is they have a license to
23 everything we have in the patent world, they've got a
24 license to it, so don't worry about it. And we know
25 from the documents that Chrysler was very sensitive to

1 Trilogy's patents, and they, in fact, believed we were
2 litigious even more.

3 They also said, well, wait a minutes,
4 that's not true, because, really, Chrysler didn't like
5 you; chrysler didn't like the way that you did business.
6 And he showed you part of a document a while ago about
7 what Chrysler's position really was, but you remember
8 that we showed you that document, and it's 309.

9 And let's get 309 up here just a second
10 and go to the second page.

11 And here's what Chrysler, the people on
12 the ground at Chrysler that use our product, that were
13 going to have to change to a different product, here's
14 what they said. They said, feedback on the Versata
15 presentation, they weren't going to make the cut,
16 because it came in high, and the person that dealt with
17 our software and our product said that she didn't agree
18 with that thinking, because you get what you pay for,
19 but Purchasing made the decision for us; we may not have
20 a choice.

21 Then it says that the rest of the bids
22 from the other sides are delusional, and she said, since
23 Versata has experience and you guys know the data
24 issues, garbage in/garbage out, she would choose us and
25 it would be us hands down and that she'll continue to

1 beat the drum for us for what it's worth.

2 But Chrysler, in fact, wanted a lower
3 price, but here's what else they wanted. They wanted it
4 hassle-free. And having been told -- and they were told
5 by AutoData, that's the who told them -- and they told
6 them before the June 25th sushi lunch, because
7 Mr. Sullivan knew it.

8 They were told, wait a minute, we've got
9 a license to the entire portfolio, and that made it
10 really easy -- easy for Chrysler to go with the cheap
11 bid as opposed to the people who knew what they were
12 doing. They got it cheaper, and now they say we can't
13 be sued, even though Versata may be litigious, because
14 these people have a license.

15 That, Ladies and Gentlemen of the Jury,
16 is untrue. And not only does it breach the contract
17 because they said they would never ever mention that to
18 anybody, but they overstated it, just like they have in
19 this lawsuit.

20 And they overstated it to our detriment,
21 and it caused us to lose the contract. And that's why
22 we're damaged to the tune of between 11 million and
23 \$14.6 million, which would have been our profits.

24 Mr. Diaz, can you get the jury form up
25 for me just a moment?

1 And so the answer to Question No. 1,
2 Ladies and Gentlemen, is yes to each of the claims.
3 They don't even put up a fight about that. At the end
4 of the day, they roll over and said, okay, we understand
5 we infringe.

6 The real fight's on invalidity. The
7 answer on each of these is no, and the reason is, is
8 that when they had a chance to prove the patent was
9 invalid -- and, remember, I told you last Monday that I
10 thought Judge Bryson would tell you the patent is
11 presumed to be valid, and he did, that they have to, by
12 clear and convincing evidence, prove to you that every
13 single element of every claim was in the prior art.

14 And they didn't even try. They skipped
15 elements. They left claims out. They didn't even get
16 near it. The answer to that is no.

17 Go to the next one.

18 Well, this one is, is it obvious? And I
19 don't think even with a straight face, they can say it
20 was obvious. They said it took hard work to develop
21 these sorts of things, that people on the streets just
22 couldn't do it. It wasn't obvious to anybody. They
23 didn't even try on that, so the answer is no.
24 And the damage amount is \$137,000.

25 Next one.

1 Breach of contract. Have we proved by a
2 preponderance of the evidence that they failed to comply
3 with the settlement agreement?

4 The answer is yes. And we know for sure
5 that Mr. Perrier told his associate to tell Chrysler
6 we've got licenses; don't you worry about it. And that
7 breaches the contract that they signed with us, because
8 they had to, because they had filed a frivolous lawsuit
9 and they were caught in that trap, and they wanted to
10 get out. They would ordinarily never touch it with a
11 10-foot pole, but once they agreed to it, they had to
12 stick by it. And they didn't do it, so the answer is
13 yes.

14 What's the next question? The next
15 question is, do you find that Versata has proved by a
16 preponderance of the evidence that there was a
17 reasonable probability that it would have entered on
18 into a contract with Chrysler?

19 And the answer to those three questions
20 is yes, and the reason is Chrome was not really a
21 competitor. And once Chrysler had the hurdle of they
22 don't have a portfolio license, we're the only choice.

23 And not only that the people on the
24 ground at Chrysler wanted us to win, because we had
25 proven better technology. Had there been a bump in the

1 road? Absolutely. You can't have one of these when
2 people aren't fussing back and forth, but they never
3 said it didn't work. They never said they didn't like
4 us.

5 The people that dealt with us said they
6 loved us and we won hands down. It was only because
7 they, in fact, were told that somebody with a cheaper
8 price had a license to all of our stuff, so why did they
9 care.

10 Remember the document that we showed you
11 a little while ago that said they wanted the same feel
12 and the same look and the same functionality they had
13 before. They wanted us. The answer to that is yes.

14 And the last question was, are they
15 legally justified? The answer is no, and I didn't even
16 hear an argument from counsel about how they were
17 legally justified.

18 THE COURT: Mr. Baxter, two minutes.

19 MR. BAXTER: Thank you, Your Honor.

20 Next question.

21 The damage number is easy to compute.
22 It's the profits that we would have made. We showed you
23 what those were, what the numbers were. There were
24 fully burdened costs. That answer is easy.

25 Next question.

1 And this question has to do with, if you
2 find that they interfered and they did so on what's
3 known as -- on an egregious basis, we say yes. That
4 amount of money is up to you.

5 Next question.

6 Now, this has to do with AutoData's
7 claims, and as I told you, the Judge asked you, well,
8 did they really have a trade secret?

9 And the answer is, no, they did not. And
10 you heard the experts say why they didn't. The answer
11 to all three of those is no.

12 Next question.

13 Did you find that -- that Versata
14 misappropriated?

15 And as I told you, Judge Bryson asked you
16 specifically about Toyota, two things, SC AutoCompare,
17 which we never delivered to them, so we couldn't have
18 violated it there; and, two, the schema that we wrote
19 and all the documents say we wrote it.

20 You look at those documents, and you'll
21 be convinced that the answer is no, and, therefore,
22 there's no need to even answer that next question.

23 Next one.

24 Do you find that the evidence that we
25 failed to comply by the confidentiality agreement?

1 The answer is no. And as Mr. Cole told you, there is a
2 question here that says, well, okay, they didn't prove
3 anything, no damage proved, but go ahead and put a
4 dollar in.

5 Ladies and Gentlemen, for reasons that
6 are legal, it's very, very, very important that answer
7 be zero. You know if they put \$1 in there, they didn't
8 really want to talk about it about why it was just \$1.
9 I'd be embarrassed, too.

10 But the answer to that is no to begin
11 with, and you don't even have to answer to the B part,
12 but the B part answer is zero.

13 Ladies and Gentlemen, I know it's been a
14 long, hard week. You've heard stuff that you never
15 thought you'd have to consider in your lives. But it's
16 an important case, and if nothing else, it's important,
17 because the system demands that people come to court and
18 be honest with you of what happened.

19 And, unfortunately, you've seen an
20 example, and you cannot let people abuse the system.

21 And we eagerly await your decision.

22 Thank you.

23 THE COURT: Thank you, Mr. Baxter.

24 Now, it is time for you to deliberate on
25 your verdict. The first thing you should do when you

1 retire to the jury room is to select a foreperson who
2 will be responsible for communicating with the Court as
3 needed.

4 You should then begin your deliberations.
5 Your verdict on each issue must be unanimous. There
6 will be a verdict form in the jury room waiting for you
7 when you retire for your deliberations.

8 And when you've reached a unanimous
9 verdict as to each question on the verdict form, the
10 foreperson is to fill in the answers on the verdict
11 form.

12 Now, make sure you read the questions
13 carefully. As you've seen the questions on the screen,
14 it's the same form as you'll see in the jury room. But
15 some of the questions may not require answers, depending
16 on how you answer other questions.

17 Do not reveal your answers to any of the
18 questions until you're discharged. Also, you should not
19 reveal your numerical division on any issue during the
20 course of your deliberations, even to me.

21 When you return to announce your verdict,
22 please bring the special verdict form with you, the one
23 with the questions answered.

24 Now, I expect that when you get to the
25 jury room to begin your deliberations, you may feel a

1 little overwhelmed. This has been a very complicated
2 case, and there's a lot of evidence and argument to
3 think about. But I think you will be pleasantly
4 surprised that as you start working methodically through
5 the case, things will begin to seem more manageable.

6 I hope and expect that you will listen to
7 one another's views respectfully, even if initially you
8 disagree on some issues. Discussing the issues from
9 different perspectives can often help in formulating
10 your own ideas about how particular issues should be
11 decided.

12 Now, if you wish to see any of the
13 exhibits, you're free to see them. Just give a note to
14 the court security officer, who will be taking care of
15 you during your deliberations. You can ask to see all
16 the exhibits or you can just ask for some of them, if
17 you like. Just let us know what you want, and we'll get
18 the exhibits that you want for you.

19 If you want -- if you have a question or
20 otherwise want to communicate with me at any time,
21 please give a written message or question to the court
22 security officer, who will bring it to me. You probably
23 will not get a reply right away, as I ordinarily will
24 have to summon all the lawyers and get their input
25 before I can respond to the questions. So it's not

1 something I can get right back to you on, but we will
2 endeavor to get answers to your question.

3 And if you do have a question that's
4 hanging you up, you're entitled to ask. I will tell
5 you, though, that once the case is submitted to you, we
6 will not be able to take any additional evidence or
7 testimony. And in most instances, in my experience,
8 we'll just have to tell you to rely on your recollection
9 of the evidence.

10 I think you will find in most instances,
11 if you put your heads together, you will recall the
12 evidence that you need to get over the problem. That's
13 one of the reasons there is a group of you. Eight
14 memories are better than one.

15 And finally, trust your common sense
16 throughout the process. As I mentioned, the founding
17 fathers of this country had great confidence in the
18 sound common sense of the American jury. They had
19 confidence in you to do your job diligently and well.

20 These parties have confidence in you, and
21 so do I.

22 You may now retire for your
23 deliberations.

24 (Jury out.)

25 THE COURT: Thank you. I -- I just

1 wanted to take this moment -- you may be seated, please.

2 I will take a moment of your time -- I
3 don't want to do this after verdict, because after
4 verdict, half of you will not want to hear from me for
5 one reason, and the other half will not want to hear
6 from me for quite a different reason, I suspect.

7 I do have a couple of things that I'd
8 like to say. First of all, I want to thank you and
9 congratulate you on a highly skilled and professional
10 presentation throughout this week. It has been a
11 pleasure to be here and watch highly talented,
12 hard-working attorneys practice their profession.

13 And this goes not just for the work done
14 in court but also for the written work that has been
15 submitted over the course of this case. I have been
16 highly impressed with the quality of the representation
17 on both sides of this case.

18 Let me thank also -- and this is a
19 heartfelt thanks -- the court staff in this case,
20 Ms. Martin, who was here during the first three days of
21 the trial, Ms. Lockhart, who is here now, as the
22 courtroom deputies, and Ms. Holmes, who has been here
23 throughout, are terrific, professional, knowledgeable,
24 and dedicated public servants. And I am amazed at how
25 good they are.

1 There is also, I think, this same kind of
2 quality throughout this -- this courthouse. It's
3 remarkable. This little courthouse is a jewel of
4 quality people who not only really know their business
5 and throw themselves into it with great enthusiasm, but
6 they are the nicest people on Earth.

7 And I'd particularly like to call out a
8 group of people that maybe some of you haven't seen in
9 the course of the trial. It's the group of people who
10 have been working late into the night putting together
11 your daily transcripts. That is hard, hard work, and
12 they are as friendly and upbeat, and they throw
13 themselves into it.

14 It's a remarkable place, and it has been
15 a real pleasure to be here.

16 Thank you.

17 (Recess.)

18 (Jury out.)

19 COURTROOM DEPUTY: All rise.

20 THE COURT: Okay. We have a note. By in
21 large, this looks pretty straightforward. I notice my
22 eye was drawn immediately to Plaintiff's Exhibit 310.
23 It seems to me we simply -- do we have everybody that
24 needs to be here?

25 MR. COLE: Yes, Your Honor.

1 THE COURT: All right. You can have a
2 seat. Sorry.

3 I think with respect to 310, we just tell
4 them that exhibit is not in evidence and leave it at
5 that, period. That's the infamous exhibit that --

6 MR. ANAIPAKOS: Your Honor, I may have
7 not heard, but what was the question they asked?

8 THE COURT: Oh, haven't you seen the
9 note?

10 LAW CLERK: We haven't given them --

11 THE COURT: Oh, I'm sorry. I thought you
12 had given them the note. I'm sorry.

13 Why don't you give them the note? I'm
14 sorry, I thought the note had been distributed. Yes, we
15 have a note and --

16 LAW CLERK: Sorry.

17 THE COURT: No wonder you looked a bit
18 puzzled.

19 MR. ANAIPAKOS: That's usually the way I
20 look.

21 THE COURT: All right. Anyway, they want
22 one, two, three, four, five, six, seven, eight, nine,
23 and the Bing Burris deposition.

24 Now, it's not clear to me, when they say
25 the Bing Burris deposition, whether they want to see the

1 video or whether they would be satisfied with the
2 transcript. They probably -- they may understand that
3 there's a transcript, but they may want the video.

4 Let me hear from both sides as to how you
5 want to proceed. You see the 310 that I'm talking
6 about?

7 MR. COLE: Yes, Your Honor.

8 THE COURT: All right. Let me hear from
9 the Plaintiffs.

10 MR. COLE: I guess --

11 THE COURT: Igor, could you be digging up
12 the exhibits as best you can? You need another copy?

13 LAW CLERK: Yes, do you have the -- the
14 handwritten one up there?

15 THE COURT: I left it back in the --

16 LAW CLERK: Okay. I'll run --

17 THE COURT: But -- yeah, all right.

18 Sorry, our -- why don't you go ahead, I
19 think we can proceed.

20 MR. COLE: I don't think it's a huge
21 difference, but from our standpoint, it would probably
22 be more efficient to just give them the transcript of
23 the deposition, but --

24 THE COURT: Well, here's what I propose
25 -- well, let me hear from the defense, and then I'll

1 tell you what I propose.

2 MR. ADAMS: I was going to suggest
3 actually the video, because that's what they recall, but
4 I assume they probably want to see it again.

5 THE COURT: Yeah, they may. I was going
6 to propose that we do kind of two stages. One would be
7 dig up all of these exhibits, tell them that 310 we
8 can't give them because it is not in evidence.

9 Now, you know, I guess the most neutral
10 way to say it is not in evidence or has not -- is not --
11 not in evidence may be -- is that the best way to
12 articulate it? Because they're -- they must be -- how
13 in the world did they remember that? Well, I guess
14 they -- it's remarkable what they -- they remember, but
15 they did remember it. All right. Not in evidence is
16 the language I would propose.

17 Then for the -- we dig up everything
18 else. I don't know that we want to excerpt the pages
19 they want for three of the exhibits. Is 3 -- excuse me,
20 is 309 the Vanessa Kelly e-mail, or is there a separate
21 exhibit that's the Vanessa Kelly e-mail? I can't tell
22 whether they're giving us an additional request.

23 MR. KNEUPPER: It is 309.

24 THE COURT: It is 309. Okay. So we give
25 them the exhibits. We tell them 309 (sic) is not in

1 evidence, and I would propose that we give them the
2 transcript pages of the Bing Burris deposition with a
3 statement in a note back to them that if they wish to
4 see the Bing Burris deposition, we have the facilities,
5 I take it, to show that. Do we -- we have the people
6 here who can do that?

7 MS. BAEHR: We do, Your Honor.

8 THE COURT: Okay.

9 MR. KNEUPPER: Your Honor, one issue to
10 correct, I believe you said to tell them 309 is not in
11 evidence. 310 is the --

12 THE COURT: Did I say that? I meant 310
13 is not in evidence, 309 is, and that's the Vanessa
14 Kelly -- yeah, all right.

15 So is that -- is that a sensible way to
16 proceed? You know, we could bring them in, show them
17 the Bing Burris deposition, but if -- if really all they
18 want to see is what he said and they'd be happy with the
19 deposition, I guess that's a little -- with the
20 transcript, that's a little quicker.

21 MR. KNEUPPER: One note on that, Your
22 Honor, I just -- as to how the Court wants to proceed, I
23 believe Mr. Burris' deposition was about 30 to 34
24 minutes in length, so if there's a --

25 THE COURT: I think that's about right.

1 MR. KNEUPPER: -- section they want to
2 see or -- but -- just to note that for the Court.

3 THE COURT: Well, that's right, and that
4 means we're committing them to probably, in effect,
5 better part of an hour just bringing them in, putting it
6 up, and so forth, when they may only want to rifle-shot.
7 It looks like they've done some rifle-shooting already.

8 So why don't we offer them the
9 deposition?

10 Is that okay?

11 MR. ADAMS: Yes, that's fine, Your Honor,
12 that seems like a good approach so they --

13 THE COURT: With a note saying, if you
14 would like to see it, we can set it up for you.

15 MR. ADAMS: Yeah.

16 THE COURT: Let's do a little drafting on
17 the fly here.

18 Enclosed are the exhibits you requested,
19 except for PX 310, which is not in evidence.

20 MR. ADAMS: Your Honor, are you
21 comfortable that the jury will understand the
22 significance of that?

23 THE COURT: I'm not sure they will
24 understand the significance of it, but I am weighing --
25 I'm not sure I want them to know too much about what --

1 I mean, the significance of it, if we say it's not in
2 evidence or was not admitted into evidence, the trouble
3 is, was not admitted was not quite correct, because it
4 was, and then it was withdrawn.

5 MR. ADAMS: I was going to suggest, not
6 in evidence and not to be considered.

7 THE COURT: Yes?

8 MR. ANAIPAKOS: My view on that
9 respectfully, Your Honor, is you gave them a very
10 explicit instruction at the end of the case on that
11 exhibit. They understand it. The Court's charge says
12 to consider only the evidence.

13 THE COURT: Yeah.

14 MR. ANAIPAKOS: You're telling them it's
15 not in evidence, that's sufficient.

16 THE COURT: Yeah. I'm inclined to start
17 that way, and I guess if they come back to us and ask
18 for more -- I just can't think of a way to articulate it
19 that doesn't raise more questions than it answers.

20 So -- which is not in evidence, period.
21 The -- we are providing you with a copy of the
22 transcript -- court reporter's transcript -- court
23 reporter's transcript of the Bing Burris deposition. If
24 you would like to view the video of that deposition, we
25 can show it to you.

1 Good?

2 MR. COLE: That's fine. I don't know
3 that it's necessary, but we might tell them how long the
4 video is so they can time allocate in their mind --

5 THE COURT: Not a bad idea.

6 Objection? No objection?

7 MR. ADAMS: No objection. The other
8 thing that I was thinking about is since only portions
9 were designated, I don't know if we have a copy handy
10 that's got the portions that were designated
11 highlighted.

12 MR. COLE: It would be in the transcript.

13 THE COURT: Yeah, what we've got is a
14 transcript that -- I mean, Ms. Holmes is taking down the
15 entire --

16 MR. ADAMS: Oh, I see what you're saying.

17 THE COURT: -- deposition as he spoke.

18 MR. ADAMS: Got it.

19 THE COURT: So --

20 MR. ADAMS: That makes sense.

21 THE COURT: All right.

22 MR. ADAMS: I thought you were talking
23 about the actual deposition transcript.

24 THE COURT: Let's see, the video of the
25 deposition -- does somebody have how long -- how long it

1 is?

2 MR. COLE: I think it was 34 minutes.

3 LAW CLERK: 36 minutes, Judge. I have
4 36, maybe a little less.

5 THE COURT: Igor has 36. You've got 34?

6 LAW CLERK: I may have rounded.

7 MR. COLE: We'll go 35.

8 THE COURT: 35 minutes. Okay. Creative
9 approximation.

10 All right. I'm going to write a note. I
11 guess we should do it -- we should type it up and send
12 it back to the -- to the jury.

13 Can you -- have you got all the exhibits?

14 Yeah, let's do this, you all know your
15 exhibit boxes better than we do, obviously. Can you
16 send exhibit -- wise people up and pull out these
17 exhibits, and, meanwhile, we'll be writing the note.

18 And, let's see, do we have somebody that
19 has a clean copy of the -- what day did Bing Burris'
20 deposition come in; do you recall?

21 MR. ADAMS: I think it was Wednesday.

22 THE COURT: Was it Wednesday? I somehow
23 thought --

24 MR. KNEUPPER: No, I believe it was
25 Tuesday.

1 THE COURT: I thought it was Tuesday.

2 All right.

3 MS. BAEHR: Tuesday -- Tuesday afternoon.

4 MR. KNEUPPER: Afternoon.

5 THE COURT: Tuesday -- yeah.

6 Does somebody have or can somebody make
7 available to us those pages, because I --

8 MR. ANAIPAKOS: Yes, we have the daily
9 copy, Your Honor.

10 THE COURT: Yeah, okay. Well, if you
11 don't mind providing that material to us, it will save
12 us having to go back and -- and pull it out and we can
13 get this back to the jury more quickly.

14 Why don't we -- let me see, is that it?
15 Is that the only thing we need?

16 Oh, there is the one other issue. They
17 have specified particular pages of 234 and 452. I
18 hardly see why, since they know the pages they're
19 interested in, why we should pluck out only those pages.

20 I'd be inclined to give them the whole
21 exhibits, but maybe we should acknowledge that they've
22 asked for pages and say something along that line.

23 Is there a reason why we shouldn't do it
24 that way?

25 MR. ANAIPAKOS: Your Honor, from the

1 Plaintiff's standpoint, I think you should give them the
2 whole exhibit and then tell them the pages are contained
3 in there.

4 THE COURT: Yeah, that's my --

5 MR. ADAMS: I agree.

6 THE COURT: All right. Okay. You have
7 requested particular pages from PX 0234, PX 452, and PX
8 202. We are sending you the full text of those
9 exhibits. The pages you requested are contained
10 therein. All right. One of my favorite words.

11 Okay. Is that okay?

12 MR. KNEUPPER: It's acceptable from us,
13 Your Honor.

14 MR. ADAMS: I'm fine, Your Honor.

15 THE COURT: Okay. I think we have --
16 now, if you all could stick around, we will try to type
17 this up.

18 Yes?

19 MS. SMITH: No.

20 THE COURT: Oh, you were just standing.
21 I appreciate that. I thought you had a point that you
22 wanted to raise.

23 Okay. We will put this package together.
24 If you all could -- could wait around, I want everybody
25 obviously to look at the final product, and you've got

1 the -- have you got the Bing -- did you get the
2 transcript? They've gone to get the transcript.

3 And if you all could pull out those
4 exhibits and you could leave them on Mr. Helman's desk,
5 we'll be typing up the responsive note.

6 LAW CLERK: All rise.

7 (Recess.)

8 (Jury out.)

9 THE COURT: Okay. So we have the --

10 LAW CLERK: You have the exhibits.

11 THE COURT: Do you have Bing Burris?

12 LAW CLERK: No, we're waiting --

13 THE COURT: We're collating Bing Burris.

14 Okay. We'll be with you in just a second. I think
15 we're -- we're at the end of the process of putting
16 everything together.

17 Let me tell you what I'm going to do, I'm
18 going to mark Bing Burris deposition on the top of that.

19 Is that agreeable to everybody?

20 MR. COLE: Yes, Your Honor.

21 THE COURT: All right.

22 MR. ADAMS: Does it start in the middle
23 of the page or --

24 THE COURT: Well, what I'm going to do is
25 I will cross out everything -- well, I can either start

1 out -- it starts -- the deposition itself starts on Line
2 21. Ms. Baehr's instruction starts on Line 11. I can
3 either cross out the very top part of it, or I can cross
4 out Ms. Baehr and go right down to the beginning of the
5 deposition and just say, Bing Burris deposition, and
6 then have a little arrow going down from there.

7 Is that agreeable?

8 MR. ADAMS: We're fine either way, Your
9 Honor.

10 MS. BAEHR: We're agreeable with that,
11 Your Honor.

12 THE COURT: You don't mind being crossed
13 out?

14 MS. BAEHR: I don't mind being crossed
15 out. It might be better in this case, actually.

16 THE COURT: No, no. All right.

17 MR. ADAMS: Your Honor, I think we have
18 the same issue on the last page.

19 THE COURT: I will take care of the last
20 page, as well. Okay. The whole last page here goes
21 out.

22 MR. ADAMS: Okay. Backside?

23 THE COURT: I am correct that it's
24 B-u-r-r-i-s, correct?

25 MR. ADAMS: Correct.

1 MR. KNEUPPER: Yes, Your Honor.

2 THE COURT: All right. Okay. And you
3 have a -- you have the note that goes with that?

4 LAW CLERK: Yes.

5 THE COURT: Why don't you put that -- the
6 Bing Burris deposition on top?

7 Okay. That's good. Okay. I think we're
8 ready to go. Do you want -- just allow counsel to look
9 at the package --

10 LAW CLERK: Sure.

11 THE COURT: -- so that they're satisfied
12 that we haven't slipped something in there.

13 MS. SMITH: Thank you. Thank you.

14 MR. ANAIPAKOS: Judge, this is going to
15 be silly, but I'm going to say it anyway. I think, with
16 all due respect, we should probably give them the
17 materials in the order that they requested them.

18 THE COURT: It's not silly.

19 LAW CLERK: They already are in --

20 THE COURT: And --

21 LAW CLERK: Except for the Bing Burris
22 deposition.

23 THE COURT: Except for Bing Burris.

24 MR. ANAIPAKOS: That's my point.

25 THE COURT: Oh, okay. We'll put Bing

1 Burris on the bottom. I just -- well, that's fine.

2 MR. ANAIPAKOS: Admitted, it was silly,
3 but I couldn't resist.

4 THE COURT: No, I mean, that's fine. My
5 judgment is it's not silly.

6 MR. ANAIPAKOS: Thank you, Your Honor,
7 you're very kind.

8 LAW CLERK: You don't think we'll get --

9 THE COURT: That was my only concern that
10 it might --

11 LAW CLERK: Because it's not in a folder.

12 THE COURT: Do we happen to have an extra
13 folder in the house, a blank folder, and I'll write Bing
14 Burris deposition on the --

15 LAW CLERK: We can put it in a folder in
16 chambers.

17 MR. KNEUPPER: We might be able to
18 salvage the folder from Exhibit 310 if we rip off the
19 side.

20 THE COURT: No, no, no, don't do that.
21 Don't do that.

22 Let's -- I tell you what, I think I will
23 -- I think I will overrule the not silly objection and
24 go with Bing Burris on the top right underneath the
25 note, response. They'll get -- I think this looks like

1 a pretty intelligent jury. I think they'll figure it
2 out. We'll go that way, unless somebody feels very
3 strongly about that. Okay.

4 LAW CLERK: All rise.

5 (Recess.)

6 (Jury out.)

7 COURT SECURITY OFFICER: All rise.

8 THE COURT: The jury has apparently
9 reached a verdict in this case.

10 Do we have -- we don't have everybody?

11 MS. SMITH: We don't. They're on their
12 way.

13 THE COURT: Okay. We'll wait for
14 everybody. I suppose it's not -- doesn't -- please be
15 seated.

16 Let me do one thing before -- I realize
17 that as simple as the previous note and exchange was, it
18 really is supposed to have been on the record. My
19 mistake. And I'd like to do a little backfilling on
20 that.

21 What happened, for the record, is that a
22 jury note came in -- Mr. Schumacher, I'm explaining the
23 circumstances of the previous note. There's nothing new
24 here.

25 MR. SCHUMACHER: Okay.

1 THE COURT: Which requested the print
2 version of the deposition of Charles Sullivan. With the
3 agreement of counsel for both sides, I've prepared a
4 one-sentence response to the jury and the jury was
5 provided with a copy of the deposition.

6 Counsel in accordance with that account
7 of the events?

8 MS. SMITH: Yes, Your Honor.

9 MR. COLE: Yes, Your Honor.

10 THE COURT: Thank you. Let's see, is
11 everybody and -- no, I guess is everybody here from your
12 side, Mr. Baxter? Mr. Cole?

13 MR. COLE: Yes, Your Honor. Mr.
14 Anaipakos will be right back. He was just outside.

15 THE COURT: Okay. We'll wait for him to
16 get back.

17 Okay.

18 COURT SECURITY OFFICER: All rise for the
19 jury.

20 (Jury in.)

21 THE COURT: Please be seated.

22 Mr. Foreperson, has the jury reached a
23 verdict in this case?

24 THE FOREPERSON: Yes, sir, Your Honor, we
25 have.

1 THE COURT: Will you please hand the
2 verdict to the Bailiff? Thank you.

3 Thank you.

4 I will now read the verdict.

5 This is Question No. 1: Do you find that
6 Versata has proved by a preponderance of the evidence
7 that AutoData directly or indirectly infringed the
8 following claims of U.S. Patent No. 7,130,821, the '821
9 patent? Answer yes or no for each claim.

10 Claim 1, no. Claim 10, no. Claim 13,
11 no. Claim 14 -- excuse me -- no. Claim 17, no. Claim
12 18, no. Claim 19, no. Claim 20, no. Claim 22, no.
13 Claim 23, no.

14 B: Do you find that AutoData has proved
15 by clear and convincing evidence that any of the
16 following claims of the '821 patent are invalid as
17 anticipated by prior art? Answer yes or no for each
18 claim.

19 Claim 1, yes. Claim 10, yes. Claim 13,
20 yes. Claim 14, yes. Claim 17, yes. Claim 18, yes.
21 Claim 19, yes. Claim 20, yes. Claim 22, yes. Claim
22 23, yes.

23 C: Do you find that AutoData has proved
24 by clear and convincing evidence that any of the
25 following claims of the '821 patent are invalid due to

1 obviousness? Answer yes or no for each claim.

2 Claim 1, yes. Claim 2 -- excuse me --

3 Claim 10, yes. Claim 13, yes. Claim 14, yes. Claim

4 17, yes. Claim 18, yes. Claim 19, yes. Claim 20, yes.

5 Claim 22, yes. Claim 23, yes.

6 If you answered yes to any question --

7 claim in response to Question No. 1(a) and no to the

8 same claim in Question No. 1(b) and Question No. 1(c),

9 what sum of money if paid now in cash would fairly and

10 adequately compensate Versata as a reasonable royalty

11 for AutoData's infringement of the '821 patent, answer

12 in dollars?

13 Answer: Zero dollars and zero cents.

14 Question No. 2: Do you find that Versata

15 has proved by a preponderance of the evidence that

16 AutoData failed to comply with the settlement agreement

17 of 2001? Answer yes or no.

18 Answer: No.

19 Question No. 3: Do you find that Versata

20 has proved by a preponderance of the evidence that there

21 was a reasonable probability that it would have entered

22 into a contractual or business relation with Chrysler?

23 Answer yes or no.

24 Answer: No.

25 If you answered yes to Question No. 3(a),

1 do you -- I'm going to read it anyway even though this
2 is blank, but I -- I will read it anyway -- do you find
3 that Versata has proved by a preponderance of the
4 evidence that AutoData intentionally interfered with
5 Versata's prospective contractual relations with
6 Chrysler? Answer yes or no.

7 The answer is blank.

8 Similarly, the next two are blank, but I
9 need to read them.

10 If you answered yes to Question No. 3(b),
11 do you find that but-for this intentional interference
12 Versata would have entered into a contract with Chrysler
13 for website services in 2008? Answer yes or no.

14 Answer: Blank.

15 If you answered yes to Question No. 3(c),
16 do you find that AutoData was legally justified to
17 intentionally interfere? Answer yes or no.

18 Answer: Blank.

19 Question No. 4: What sum of money, if
20 any, paid now in cash would reasonably and fairly
21 compensate Versata for its lost profits damages arising
22 from AutoData's failure to comply with the settlement
23 agreement of 2001 and/or AutoData's intentional
24 interference with Versata's prospective relationship
25 with Chrysler? Answer in dollars.

1 Answer: N/A.

2 Question No. 5: If you found that
3 AutoData tortiously interfered with Versata's
4 prospective relations with Chrysler by answering yes to
5 Question No. 3(a), 3(b), and 3(c), and no to Question
6 3(d), do you find by clear and convincing evidence that
7 the harm to Versata from AutoData's tortious
8 interference was the result of malice, fraud, or gross
9 negligence attributable to AutoData? Answer yes or no.

10 Answer: N/A.

11 If you answered yes to Question No. 5(a),
12 what sum of money, if any, if paid now in cash should be
13 assessed against AutoData and awarded to Versata as
14 exemplary damages for AutoData's tortious interference?

15 Answer in dollars.

16 ANSWER: N/A.

17 Question No. 6: Do you find that
18 AutoData has proved by a preponderance of the evidence
19 that any capability described by AutoData as a trade
20 secret is a formula, pattern, device, or compilation of
21 information that AutoData uses and that gives AutoData
22 an advantage over competitors who do not know or use it?

23 Answer yes or no.

24 Answer: Yes.

25 B: Do you find that AutoData has proved

1 by a preponderance of the evidence that this capability
2 or capabilities was or were not a matter of general
3 knowledge in the industry? Answer yes or no.

4 Answer: Yes.

5 Do you find that AutoData has proved by a
6 preponderance of the evidence that AutoData took
7 reasonable precautions to protect the alleged trade
8 secrets? Answer yes or no.

9 Answer: Yes.

10 Question No. 7: Do you find that
11 AutoData has proved by a preponderance of the evidence
12 that Versata misappropriated AutoData's alleged trade
13 secrets in applications and components provided to
14 Toyota in 1998? Answer yes or no.

15 Answer: Yes.

16 If you answered yes to Question No. 7(a),
17 how much of Versata's profits from the Toyota contracts,
18 if any, are attributable to AutoData's trade secrets?

19 Answer in dollars.

20 \$2 million and no cents.

21 Do you find that AutoData has proved by a
22 preponderance of the evidence -- I'm sorry, this is
23 Question No. 8. Do you find that AutoData has proved by
24 a preponderance of the evidence that Versata failed to
25 comply with either the 1997 confidentiality agreement or

1 the 1998 Master Services Agreement? Answer yes or no.

2 Answer: Yes.

3 If you answered yes to Question No. 8(a),
4 what sum of money, if any, paid now in cash would
5 reasonably and fairly compensate AutoData for its lost
6 profits damages arising from Versata's failure to comply
7 with the 1997 confidentiality agreement or the 1998
8 Master Services Agreement? You may award one dollar if
9 you find that AutoData has failed to prove -- present
10 proof of actual damages. Answer in dollars.

11 Answer: One dollar.

12 Signed the 15th of June 2012, Joe E.
13 Brumble, presiding juror.

14 That is your verdict. I accept the
15 verdict.

16 Do I have a request to poll the jury?

17 MR. BAXTER: No, Your Honor.

18 THE COURT: No request to poll the jury.

19 Very well. I am not allowed by the
20 general rules of practice to comment to your verdict,
21 but I am allowed to comment on your service, and I want
22 to congratulate you for having worked very hard and
23 obviously late into the night and having put great
24 effort and serious mindedness into this process.

25 The parties thank you, the Court thanks

1 you, and I congratulate you for your service. It is
2 another demonstration that the Founding Fathers had a
3 good idea when they put their trust in the good common
4 sense of the American jury, and I thank you for
5 participating in this with us.

6 Now, I am going to allow you to go back
7 to the jury room now. If you would wait just a few
8 minutes, I will come in in a few minutes and discharge
9 you, and then you will be free to go.

10 COURT SECURITY OFFICER: All rise for the
11 jury.

12 (Jury out.)

13 THE COURT: I will plan to enter judgment
14 on -- you may sit.

15 I only have a couple of comments. I will
16 plan to enter judgment on the verdict. Is there
17 anything else that either party would like me to do at
18 this point that we need to do to complete the
19 proceedings? Motions, there is a -- I guess it's the
20 28-day period for motion for relief from the judgment --
21 28 days from the entry, I think, from the judgment, if
22 my recollection is correct, which will probably be
23 Monday.

24 I would entertain requests, if any are
25 made, for modification of that time period, but for now,

1 that's the time period that governs it.

2 Is there anything further that needs to
3 be done?

4 MR. RUIZ: Not from the defense, Your
5 Honor.

6 MR. COLE: No, Your Honor.

7 THE COURT: Very well. We will stand
8 adjourned. And I will now discharge the jury.

9 (Court adjourned.)

10 *****

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/_____
SHELLY HOLMES, CSR
Official Court Reporter
State of Texas No.: 7804
Expiration Date 12/31/12

Date

/s/_____
SUSAN SIMMONS, CSR
Official Court Reporter
State of Texas No.: 267
Expiration Date 12/31/12

Date